

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The LOA respectfully requests that the STB reopen Docket No. MCF 21047 pertaining to Evergreen Trails, Inc. (“Evergreen”), based on Evergreen’s gross misrepresentation to the STB relative to its intention to provide intrastate operations in Nevada. Specifically, the LOA asserts that Evergreen represented to the STB, in conjunction with its application to acquire the transportation assets of its predecessor entity (hereinafter “CUSA”), that it had no intentions to resume CUSA’s operations in Nevada. See STB Decision Docket No. MCF 21047 (Sept. 6, 2012) at Page 3, Note 4.

More specifically, it is the LOA’s position that Evergreen has undertaken said action in an attempt to avoid proper public notice requirements and the associated regulatory scrutiny by the STB and public. See 49 U.S.C. § 14303(b) (1995). Moreover, by doing so, Evergreen hoped to avoid alerting anyone to the fact that CUSA’s Nevada Certificates of Public Convenience and Necessity (“CPCN”) were subject to revocation (“Lapsed Nevada CPCNs”). See *infra*.

Having failed to state the intent to resume operations in Nevada, Evergreen’s actions constitute false representations in its application to the STB and thereby warrant the reopening of the above referenced docket. See 49 U.S.C. § 14303(c) (1995) (stating that **the . . . [STB] shall . . . reject the application if it is incomplete**) (emphasis added); see generally 49 U.S.C. § 14307(6) (1995) (penalizing persons that make “a false or incomplete entry in that record about a business related fact or transaction”).

Evergreen’s assertion to the Nevada Transportation Authority (“NTA”) that it has obtained STB approval to restore the intrastate operating authority previously held by CUSA should now be clarified and thereafter, Evergreen should be ordered to file a new application

1 before the NTA for authority to provide intrastate, per capita commercial transportation services.

2 See 49 U.S.C. § 14303 (1995)

3 **II. PRELIMINARY STATEMENTS REGARDING INTERVENTION**

4 In submitting the attached Petition, the LOA also hereby respectfully requests that it be
5 granted Leave to Intervene pursuant to 49 C.F.R. 1112.4, as it meets the elements set forth
6 therein. See id.

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8 In particular, (1) the LOA is interested in this matter as the Lapsed Nevada CPCNs relate
9 to the same transportation market in which certain members of the LOA also do business; (2) to
10 the extent that Evergreen submitted a false application to the STB, the LOA opposes Evergreen's
11 interpretation of the STB's decision to grant it expanded powers beyond those specifically set
12 forth in Docket No. MCF 21047; and (3) Evergreen's approvals with regard to CUSA should
13 now be clarified as excluding such newly-proposed Nevada operations under the Lapsed Nevada
14 CPCNs and, instead, Evergreen should be required to file a new application for the same with the
15 NTA. See id.

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18 The LOA respectfully submits that the instant Petition, which is based on new evidence
19 and material error, will not unduly disrupt the schedule for statements that have previously been
20 filed nor will it unduly broaden the issues that have already been the focus of the prior approvals
21 in this matter. See id.

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23 Accordingly, the LOA should be granted Leave to Intervene pursuant to 49 C.F.R.
24 1112.4.

25 **III. FACTUAL BACKGROUND**

26 1. Effective September 6, 2012, the STB approved the transfer of assets applications
27 of 12 separate interstate motor passenger common carrier subsidiaries (the "Federal
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1 Application”). See STB Decision Docket No. MCF 21047 (Sept. 6, 2012) (emphasis added).

2 2. Such approval for the transfer of assets under the Federal Application also
3 included CUSA, specifically, CUSA K-TCS, LLC d/b/a CoachAmerica (“CoachAmerica”) and
4 CUSA K-TCS, LLC d/b/a Gray Line Airport Shuttle (“Grey Line”). See id.

5 3. With regard the CUSA entities, the relevant Nevada CPCNs are as follows:
6 CoachAmerica holds CPCN 2016.2; Grey Line holds CPCN 2115. See Csoka Declaration at ¶ 5
7 (NTA Order 2016.2 (Oct. 2, 2009), attached as Exhibit “A” thereto; and NTA Order 2115 (Nov.
8 14, 2006), attached as Exhibit “B” thereto).

9 4. CoachAmerica and Grey Line are solely restricted to intrastate per capita and
10 charter operations in Nevada. See id.

11 5. The Lapsed Nevada CPCNs are also under an order of temporary discontinuance
12 which has since lapsed due to the expiration of the temporary period. Additionally, pursuant to
13 Nevada Revised Statutes (“NRS”) NRS 706.391(2)(e) (2009) and Nevada Administrative Code
14 (“NAC”) NAC 706.389(1) (2002), said Lapsed Nevada CPCNs cannot be transferred nor
15 operations resumed without the NTA’s approval. See Note 3, infra.

16 6. In its Federal Application, Evergreen stated that “[CoachAmerica and Grey Line]
17 discontinued operations in April 2012 and that the assets of said companies would be
18 consolidated into Evergreen. Thereafter, Evergreen specifically stated that it *does not plan to*
19 *resume the services previously offered by these companies.*” See STB Decision Docket No. MCF
20 21047 (Sept. 6, 2012) at Page 3, Note 4 (emphasis added).

21 7. These representations and background facts served as a direct basis for the STB
22 Decision and Order. See id. at Pages 2,3, 6, and 7.

23 8. In sharp contrast to its Federal Application, in its subsequent correspondence with
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1 the NTA, Evergreen revealed its intent to “continue to operate [the Nevada services of
2 CoachAmerica and Grey Line] post-closing.” Csoka Declaration at ¶ 6 (Application Letter from
3 David H. Coburn, Esq. to James Day, Esq., (August 13, 2012), attached as Exhibit “C” thereto)
4 (emphasis added).

5 9. Said fact was never disclosed to the STB while Evergreen’s application was being
6 considered. Cf. STB Decision Docket No. MCF 21047 (Sept. 6, 2012) at Page 3, Note 4
7 (representing just the opposite to the STB).
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9 10. As such, Evergreen’s representations to the STB, which allowed it to gain its
10 instant approval from the STB, were entirely different than its recent representations to the NTA
11 relative to its ability to resume intrastate, per capita transportation services.
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13 11. Presumably, Evergreen has presented such contrasting representations to the STB
14 versus the NTA for three reasons:

15 12. First, in granting its approval, the STB undertakes an examination of the
16 “adequacy of transportation to the public” in all the relevant markets. See STB Decision Docket
17 No. MCF 21047 (Sept. 6, 2012).
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19 13. By stating that Evergreen will not resume operations in Nevada it avoided an
20 examination of the unique conditions of the highly-regulated Nevada commercial transportation
21 market and any public objections to the same.
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23 14. As a result of Evergreen’s apparent misrepresentation, the STB did not undertake
24 an examination of the “adequacy of transportation to the public” in the current Nevada market.
25 See id.

26 15. *Notwithstanding, Evergreen has grossly misrepresented the STB’s approval to the*
27 *NTA, as if it is an approval for “actual operations” in the “Nevada market.”* See Csoka
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1 Declaration at ¶ 6 (Application Letter from David H. Coburn, Esq. to James Day, Esq., (August
2 13, 2012), attached as Exhibit “C” thereto.¹

3 16. Second, by failing to properly advise the STB of its Nevada plans, Evergreen
4 sought to avoid notice to industry participants of its intent to operate in Nevada.

5 17. As a result of Evergreen’s misrepresentation to the STB, industry participants,
6 including LOA, were not properly noticed of Evergreen’s intentions relative to the Nevada
7 market. See STB Decision Docket No. MCF 21047 (Sept. 6, 2012).²

8 18. Lastly, Evergreen also avoided disclosing to the STB that CUSA was holding
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13 ¹ Evergreen’s recent NTA application (in which Evergreen has falsely claimed broader privileges to the NTA than
14 those approved by the STB) does not present the restoration of the same level of competition in the Las Vegas
15 market. Instead, Evergreen’s application is an effort to enter into a different transportation market than the one that
16 existed at the time Evergreen’s predecessor stopped operating in Nevada more than six months ago. In particular,
17 CUSA ceased its Nevada operations more than six months ago and when it did Nevada operators had to fill the
18 vacuum –by hiring additional staff and by committing additional resources to those transportation services that
19 CUSA had completely abandoned. For example, one major transportation provider agreed to honor the vouchers of
20 the then-bankrupt CUSA, even though it never received compensation from CUSA or from any other person or
21 entity on any such vouchers. As such, the exit of CUSA from the Nevada market created significant costs to be
22 borne by those left behind. Furthermore, since that time, the NTA had multiple meetings where new transportation
23 operations were approved for the Nevada market, and new CPCNs were granted, in part relying upon the full exit of
24 CUSA from the Nevada market. Each of these new investments and operations irrevocably changed the Las Vegas
25 transportation market. Among other key facts are the number of motor carriers operating in the Las Vegas market
26 today when CUSA ceased its operations. As such, Evergreen’s instant application does not restore the same level of
27 competition in the Las Vegas market, as Evergreen alleges. Instead, it disrupts, yet again, the transportation market
28 with regard to those businesses that already experienced such disruption once, in having to adjust their functions,
investments, and labor expenditures, upon the unequivocal abandonment the Las Vegas market by CUSA. There is
also further disruption with regard to those additional businesses that were since approved with the expectation that
CUSA was not resuming operations. Accordingly, Evergreen’s argument that it is merely seeking to restore the
same level of competition in the Las Vegas market is completely without merit.

² Evergreen further argues that the letter it allegedly sent to the NTA (an agency not involved in its application
before the STB whatsoever) approximately two weeks before the STB issued its decision somehow negates
Evergreen’s misrepresentations with regard to the Federal Application. This cannot be the case. The STB was the
decision maker not the NTA. Furthermore, contrary to Evergreen’s representations today, it was not, and could not
have been “obvious,” neither to the STB nor to any interested person that Evergreen would be resuming the
operations in Nevada of its predecessor entity, especially, since Evergreen made the specific representation to the
STB that it would not do so. See STB Decision Docket No. MCF 21047 (Sept. 6, 2012) at Page 3, Note 4. Indeed,
Evergreen now admits that “[Only] following filing of the Application, Evergreen identified certain business
opportunities in Nevada and . . . [decide to act upon the same].” Evergreen’s Letter to the STB, at Page 3 (October
9, 2012). Therefore, Evergreen by its own admission failed to properly notify the STB regarding the true intent of its
Federal Application. Evergreen’s own representations, therefore, foreclosed the possibility of the Nevada operations.
Nothing in the application Evergreen submitted to the STB indicated the possibility of “keeping their options open.”

1 Lapsed Nevada CPCNs.³

2 **IV. ARGUMENT**

3 A. **Given Evergreen's misrepresentations to the STB regarding its true**
4 **intentions in Nevada, the STB should clarify that any newly-proposed**
5 **Nevada operations by Evergreen are excluded from the STB's prior decision.**

6 A person at any time may file a Petition to Reopen any administratively final action of
7 the STB, if the petitioner demonstrates **material error, new evidence**, or substantially changed
8 circumstances that would materially affect the case. See 49 C.F.R. 1115.4 (1996); see also CSX
9 Corp. et al., -Control- Conrail, Inc., et al., 3 S.T.B. 764, 770 (1998) (holding similarly).

10 In particular, relevant information not included in the initial application requires a new
11 proceeding. See, e.g., Shon Ning Lee v. Immigration & Naturalization Service, 576 F.2d 1380
12 (9th Cir. 1978). In making a proper application, secret plans do not matter -an applicant has a
13 duty to disclose all relevant facts to the decision maker and where there is a failure to disclose all
14 such relevant facts, the application is properly denied. See, e.g. In re Bitter, 2008 VT 132 (Vt.
15 2008); see also 49 U.S.C. § 14303(c) (1995) (stating that **the STB shall . . . reject the**
16 **application if it is incomplete**) (emphasis added); 49 U.S.C. § 14307(6) (1995) (penalizing
17 persons that make "a false or incomplete entry in that record about a business related fact or
18 transaction"); see generally 49 C.F.R. § 1180.4(g)(ii) (stating with regard to exemptions that, if
19 the notice of exemption contains false or misleading information which is brought to the STB's
20 attention, the STB shall summarily revoke that exemption).

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25 ³ In particular, NTA regulations provide that "an application for the transfer of operating rights will not be
26 approved if there has been a cessation of operations by the transferor without the prior approval of the . . . [NTA]
27 even if the application . . . [for the same] was submitted before the operations ceased." NAC 706.389(1) (2002).
28 More importantly, for the Lapsed Nevada CPCNs to be valid, the proposed service "[shall] be provided *on a*
continuous basis." NRS 706.391(2)(e) (2009) (emphasis added). Here, the CUSA entities in Nevada, i.e.,
CoachAmerica and Grey Line, precipitously ceased their operations over six months ago. Since that time, the
Lapsed Nevada CPCNs have not been revived nor continued. Accordingly, CUSA did not have any "active license"
at the time the STB authorized Evergreen to acquire CUSA's transportation assets. Instead, the license of
Evergreen's predecessor-in-interest, CUSA, has already lapsed and was, therefore, subject to revocation.

1 Here, in its Federal Application to the STB, Evergreen falsely stated that “[CUSA]
2 discontinued operations in April 2012. The assets of these companies will be consolidated into
3 Evergreen, but Evergreen **does not plan to resume the services previously offered by these**
4 **companies.”** STB Decision Docket No. MCF 21047 (Sept. 6, 2012) at Page 3, Note 4 (emphasis
5 added).
6

7 As a preliminary matter, given that Evergreen specifically represented to the STB that it
8 was not resuming operations in Nevada, the STB’s decision cannot be determinative as to an
9 issue that was not before it. Failure to disclose such material plans to the STB is also a separate
10 basis for the STB’s denial pursuant to 49 U.S.C. § 14303(c) (1995); 49 U.S.C. § 14307(6)
11 (1995); 49 C.F.R. § 1180.4(g)(ii) (1982). Finally, failure to disclose such material fact also fails
12 to meet the requisite “notice requirements” for approval. See 49 U.S.C. § 14303(c) (1995)
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14 Accordingly, given Evergreen’s misrepresentations to the STB regarding its true
15 intentions in Nevada, the STB should now clarify that any newly-proposed Nevada operations by
16 Evergreen are excluded from the STB’s prior decision.
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18 **B. Given the NTA’s primary jurisdiction and institutional expertise in the**
19 **highly-regulated Nevada market, the STB should require Evergreen to file**
20 **an application for its newly-proposed intra-state operations before the NTA.**

21 In relevant portion, 49 U.S.C. § 14303(a) provides that the STB can only grant
22 approvals for consolidations, mergers, and acquisitions of motor carrier of passengers where it is
23 “subject to . . . [the STB’s] jurisdiction,” as set forth in Chapter 135. See id. Chapter 135, in
24 turn, provides that the STB’s “jurisdiction” directly hinges on transportation activities related, in
25 some substantial manner, to an *interstate operation*. See id. at § 13501.

26 For that reason, motor carrier transportation entirely in one state, for example, is not
27 subject to the STB’s jurisdiction. See id. at § 13504. In those cases where the operations being
28 considered for approval are mixed in nature (some activities being interstate and some intrastate),

1 the STB's exercise of jurisdiction over the intrastate activities must be predicated on a "nexus
2 between a carrier's intrastate and interstate operations." Funbus System, Inc. v. State of
3 California Public Utilities Commission, 801 F2d 1120 (9th Cir 1986) (construing the Bus Act,
4 the predecessor federal statute, administered by the Interstate Commerce Commission, the
5 predecessor entity to the STB); see also North Alabama Express, Inc. v. I.C.C., 62 F.3d 361, 364
6 (11th Cir. 1995) (holding similarly; subsequently, reversed in part on different grounds).

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8 Regardless of proper jurisdiction, Federal transportation policy associated with
9 transportation approvals also requires the STB "**to cooperate with each State and the officials**
10 **of each State on transportation matters.**" 49 U.S.C. § 14301 (1995)(a)(1)(E) (emphasis
11 added).

12
13 Here, CUSA's previous intrastate routes and the associated Lapsed Nevada CPCNs bear
14 only a slight nexus to interstate commerce – specifically, CUSA's charter bus authority.
15 Accordingly, it's the LOA's position that the STB's exercise of jurisdiction extends only to
16 interstate charter bus operations and that purely intrastate operations are more appropriately
17 regulated by the NTA and the institutional expertise to determine if Evergreen is fit to perform
18 the specific transportation services.

19
20 Accordingly, pursuant to its own enabling act, the LOA requests that the STB refer this
21 matter to the NTA for adjudication.

22 **V. CONCLUSION**

23
24 In conclusion, the LOA requests that the STB reopen Docket MC-F-21047, based on the
25 information set forth herein, and clarify that any newly-proposed Nevada operations by
26 Evergreen are excluded from the STB's decision. Furthermore, the LOA requests that the STB
27 refer Evergreen's application to operate in Nevada to the NTA for review and consideration.
28

DATED this 29th day of November, 2012.

Respectfully submitted,



KIMBERLY MAXSON-RUSHTON, ESQ.

Nevada Bar No. 5065

LOUIS V. CSOKA, ESQ.

Nevada Bar No. 7667

COOPER LEVENSON

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Counsel for LOA

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on November 30, 2012, I served a copy of the above and foregoing PETITION TO REOPEN PURSUANT TO 49 C.F.R. § 1115.4 via U.S. Mail, postage prepaid, upon the following:

David W. Newton, Esq.
Senior Deputy Attorney General
Office of the Attorney General
555 East Washington Avenue, Suite 390
Las Vegas, Nevada 89101

Nevada Transportation Authority
Applications Manager
2290 South Jones Boulevard, Suite 110
Las Vegas, Nevada 89146

David Coburn, Esq.
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1330 Connecticut Ave, NW
Washington, D.C. 20036

Mitchel B. Kahn
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300 Esplanade Drive, Suite 1170
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Federal Trade Commission
Bureau of Competition Premerger
Notification Office
600 Pennsylvania Ave., N.W.
Washington, DC 20580

U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.S.
Washington DC 20530

U.S. Department of Transportation Federal
Motor Carrier Safety Administration
1200 New Jersey Ave., S.E.
Washington, DC 20590

U.S. Department of Transportation Office
of The General Counsel
1200 Hew Jersey Avenue, S.E.
Washington, DC 20590

Ventura County Transportation
Commission
Mitchel B. Kahn
300 Esplande Dr. Suite 1170
Oxnard, CA 93036



An employee of
Cooper Levenson, Attorneys at Law

EXHIBIT 1

**DECLARATION OF LOUIS V. CSOKA, ESQ. IN SUPPORT OF LOA'S
PETITION TO REOPEN PURSUANT TO 49 C.F.R. § 1115.4**

I, LOUIS V. CSOKA, ESQ., hereby declare and state as follows:

1. I am an attorney in good standing, duly licensed to practice law in Nevada.
2. I am an attorney at Cooper Levenson.
3. I know the matters set forth herein of my own personal knowledge, except as to those matters stated upon information or belief. I am competent to testify as to those facts stated herein in a court of law and will so testify if called upon.
4. I make this declaration in support of LOA'S PETITION TO REOPEN PURSUANT TO 49 C.F.R. § 1115.4.
5. A true and correct copy of (A) NTA Order 2016.2 (Oct. 2, 2009) is attached hereto as Exhibit "A;" and NTA Order 2115 (Nov. 14, 2006) is attached hereto as Exhibit "B."
6. A true and correct copy of Application Letter from David H. Coburn, Esq. to James Day, Esq. (August 13, 2012) is attached hereto as Exhibit "C."

I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Dated this 28th day of November, 2012.

s/ Louis V. Csoka, Esq
LOUIS V. CSOKA, ESQ.

EXHIBIT A

TRANSPORTATION SERVICES AUTHORITY OF NEVADA

ORDER
and
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

CUSA K-TCS, LLC
dba Gray Line Airport Shuttle

CPCN 2115
(Formerly cpc-a 699, Subs 2, 3 and 4)
Docket No. 04-04031

The Transportation Services Authority of Nevada ("Authority") finds that the above-named carrier has complied with this Authority's Compliance Order dated January 26, 2006, the findings of fact and conclusions of law which are hereby incorporated by this reference, and therefore is entitled to receive authority from this Authority to engage in transportation in intrastate commerce as a motor carrier.

IT IS ORDERED that the Certificates of Public Convenience and Necessity identified as cpc-a 699, Sub 2, 3 and 4 are hereby vacated and CUSA K-TCS, LLC dba Gray Line Airport Shuttle is hereby granted this Certificate of Public Convenience and Necessity, identified as CPCN 2115, as evidence of the authority of the holder to engage in transportation in intrastate commerce as a common motor carrier subject to applicable statutes, rules and regulations of the Authority, and such terms, conditions and limitations as are now or may hereafter be attached to the exercise of the privileges herein granted.

IT IS FURTHER ORDERED and made a condition of this certificate that the holder shall render reasonably continuous and adequate service in pursuance of the authority herein granted, and that failure to do so shall constitute sufficient grounds for suspension, modification or revocation of this certificate.

IT IS FURTHER ORDERED that nothing contained herein shall be construed to be either a franchise or irrevocable and that failure to comply with rules, regulations and orders of the Authority and applicable statutory provisions shall constitute sufficient grounds for suspension or revocation of this certificate.

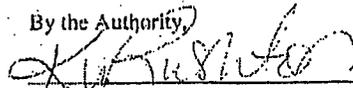
IT IS FURTHER ORDERED that this authority shall not be sold or transferred without the Authority's prior approval.

IT IS FURTHER ORDERED that the transportation service to be performed by said carrier shall be as specified below:

Provide airport transfer services to passengers and their luggage, on call over irregular routes, within Clark County, Nevada.

IT IS FURTHER ORDERED that the Authority retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order and Certificate of Public Convenience and Necessity.

By the Authority,



KIMBERLY MAXSON-RUSHTON, Chairman

Attest: April P. Woodard
April Woodard, Deputy Commissioner

Dated: 11-14-04
Las Vegas, Nevada

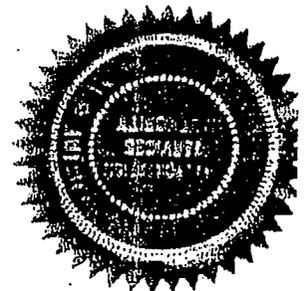


EXHIBIT B

NEVADA TRANSPORTATION AUTHORITY
ORDER
and
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

CUSA K-TCS, LLC
dba CoachAmerica

CPCN 2016, Sub 2
Docket No. 09-06023

The Nevada Transportation Authority ("Authority") finds that the above-named carrier has complied with this Authority's Compliance Order dated September 17, 2009 the findings of fact and conclusions of law which are hereby incorporated by this reference, and therefore is entitled to receive authority from this Authority to engage in transportation in intrastate commerce as a motor carrier.

IT IS ORDERED that the certificate of public convenience and necessity identified as CPCN 2016, Sub 1 is hereby cancelled and CUSA K-TCS, LLC dba CoachAmerica is hereby granted this certificate of public convenience and necessity identified as CPCN 2016, Sub 2 as evidence of the authority of the holder to engage in transportation in intrastate commerce as a common carrier by motor vehicle subject to applicable statutes, rules and regulations of the Authority, and such terms, conditions and limitations as are now or may hereafter be attached to the exercise of the privileges herein granted.

IT IS FURTHER ORDERED and made a condition of this certificate that the holder shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure to do so shall constitute sufficient grounds for suspension, modification or revocation of this certificate.

IT IS FURTHER ORDERED that nothing contained herein shall be construed to be either a franchise or irrevocable and that failure to comply with rules, regulations and orders of the Authority and applicable statutory provisions shall constitute sufficient grounds for suspension or revocation of this certificate.

IT IS FURTHER ORDERED that this authority shall not be sold or transferred without the Authority's prior approval.

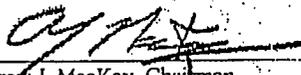
IT IS FURTHER ORDERED that the transportation service to be performed by said carrier shall be as specified below:

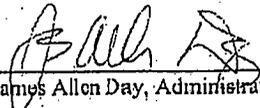
Provide scenic tour services and special services to passengers and their luggage, on call over irregular routes, between points and places in Clark County, Nevada on one hand and points and places within the State of Nevada on the other hand.

Provide intrastate charter bus service between points and places in the State of Nevada.

IT IS FURTHER ORDERED that the Authority retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order and Certificate of Public Convenience and Necessity.

By the Authority,


Andrew J. MacKay, Chairman

Attest: 
James Allen Day, Administrative Attorney

Dated: October 7, 2009
Las Vegas, Nevada

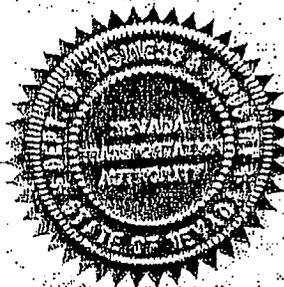


EXHIBIT C

David H. Coburn
202 429 8063
dcoburn@steploe.com

Steploe
STEPTOE & JOHNSON LLP

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steploe.com

August 13, 2012

VIA Federal Express

Mr. James Day
The Nevada Transportation Authority
2290 South Jones Boulevard
Suite 110
Las Vegas, NV 89146

Re: Notification of the Transfer of Certificates of Public Convenience and Necessity 2115, 2016 sub. 1 and 2016 sub. 2 Pursuant to a Transaction Subject to Surface Transportation Board Jurisdiction

Dear Mr. Day:

As per my letter of August 2, 2012, we advised you that that Certificate of Public Convenience and Necessity ("CPCN") CPCN No. 2113 was transferred from CUSA AWC, LLC to All West Coachlines, Inc. and CPCN No. 2121 was transferred from CUSA ELKO, LLC to Elko, Inc. We are now writing to you to advise you of a separate transaction under Surface Transportation Board ("STB") jurisdiction involving the transfer of CPCNs from CUSA K-TCS, LLC dba K-T Contract Services ("K-TCS") to Evergreen Trails, Inc. dba Horizon Coach Lines ("Evergreen"). As described further below, this transaction will involve the transfer of CPCN Nos. 2016 sub. 1, 2016 sub. 2 and 2115 from K-TCS to Evergreen.¹

Evergreen is a Washington corporation that is an interstate passenger motor carrier that holds federally-issued interstate operating authority. Evergreen and its affiliates seek to consummate a transaction subject to STB jurisdiction that will result in the assets (including the good will, contracts, and intrastate operating permits) of ten different motor carriers currently owned by Coach America Holdings, Inc. ("Coach America") being incorporated into Evergreen (the assets of two other Coach America subsidiaries will be consolidated into a company affiliated with Evergreen). One of those ten Coach America subsidiaries is K-TCS, which currently holds CPCN Nos. 2016 sub. 1, 2016 sub. 2 and 2115. Coach America and its

¹ In a July 6, 2012 letter stated that CPCN Nos. 2016 sub. 1 and 2016 sub. 2 would be transferred from CUSA ELKO, LLC to Elko, Inc. That was incorrect. CUSA ELKO, LLC never held those CPCNs. Those CPCNs are being transferred to Evergreen pursuant to a separate transaction as described in this letter. The only CPCN transferred from CUSA ELKO, LLC to Elko, Inc. is CPCN No. 2121.

Mr. James Day
August 13, 2012
Page 2

Steptoe
STEPTOE & JOHNSON LLP

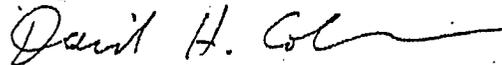
subsidiaries are currently in Chapter 11 bankruptcy and the asset acquisition transaction has been approved by the U.S. Bankruptcy Court for the District of Delaware. Once the transaction has closed, Evergreen intends to continue operating the services currently operated by K-TCS.

Evergreen and related entities filed an application with the STB seeking control of the assets of the Coach America companies. On June 28, 2012, the STB granted Evergreen and related entities interim approval to control the assets of the Coach America companies. On July 3, 2012, the STB issued a decision soliciting comments on the application for permanent approval. A copy of both of these decisions is attached hereto. As you know, the STB's jurisdiction is exclusive in connection with this transaction. I will provide the Commission with a copy of the STB's final decision when it is issued.

When we spoke regarding a similar transaction that was the subject of the August 2, 2012 letter referenced above, you advised me that where the transfer of intrastate authorities is to be approved by the STB no further filings with the TSA are required. Therefore, Evergreen does not intend to make any additional filings and will operate using the same TSA numbers assigned to the K-TCS, whose services Evergreen will continue to operate post-closing. It should be noted that the transfer of CPCNs should not be reflected in your records until the closing of the transaction has occurred and the CPCNs have actually been transferred. Evergreen will advise the TSA when the closing is complete.

If you have any questions, please do not hesitate to call me. We appreciate your cooperation.

Respectfully,



David H. Coburn
Christopher G. Falcone
STEPTOE & JOHNSON LLP
Attorneys for Evergreen Trails, Inc.

cc: George Hanthorn,
Counsel for CUSA K-TCS, LLC