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June 28, 2012
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NOS. MC-F-21047 AND MC-F-21047-TA

**FRANK SHERMAN, FSCS CORPORATION, TMS WEST COAST, INC.,
EVERGREEN TRAILS, INC. AND CABANA COACHES, LLC – ACQUISITION
AND CONSOLIDATION OF ASSETS – AMERICA CHARTERS, LTD.;
AMERICAN COACH LINES OF JACKSONVILLE, INC.; AMERICAN COACH
LINES OF MIAMI, INC.; AMERICAN COACH LINES OF ORLANDO, INC.;
CUSA ASL, LLC; CUSA BCCAЕ, LLC; CUSA CC, LLC; CUSA FL, LLC; CUSA
GCBS, LLC; CUSA GCT, LLC; CUSA K-TCS, LLC; AND MIDNIGHT SUN
TOURS, INC.**

**APPLICANTS' REPLY TO VENTURA COUNTY TRANSPORTATION
COMMISSION REQUEST FOR DELAY**

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**APPLICANTS’ REPLY TO VENTURA COUNTY TRANSPORTATION
COMMISSION REQUEST FOR DELAY**

On June 19, 2012, the Ventura County Transportation Commission (“VCTC”), a county transit agency, filed a request for delay (“Request”) in Docket No. MC-F-21047. Applicants Frank Sherman, TMS West Coast, Inc. and related co-applicants (collectively, “TMS”) hereby reply.

In the referenced proceeding, the Board is considering the June 4, 2012 Application of TMS to acquire and control the assets of twelve motor passenger carriers currently controlled by Coach America Holdings, Inc. (“Coach America”). One of those carriers is CUSA CC, LLC (“CUSA CC”). In the companion proceeding (Docket No. MC-F-21047-TA) the Board is also considering TMS’s request for interim control

authorization with respect to the same assets. As the Board is aware, Coach America and CUSA CC are currently in Chapter 11 proceedings.¹

According to VCTC's Request, VCTC has entered into a lease agreement and an operating agreement with CUSA CC for transit services. VCTC claims that these agreements, which are scheduled to expire on June 30, 2012, have been extended by the parties until June 30, 2015, despite acknowledging that the parties never came to an agreement on rates applicable to an extension and that CUSA CC never signed an extension agreement. Request at 3.

VCTC's Request for Delay asks the Board to delay this proceeding indefinitely (or to June 30, 2015) or to condition its approval of the Application on TMS's agreement, through its subsidiary, to step into CUSA CC's shoes and provide services pursuant to the contract through June 30, 2015. VCTC suggests that the continuation of service until June 30, 2015 is necessary to provide it adequate time to find a new contractor. For several reasons, the Board should deny VCTC's request.²

¹ Coach America and CUSA CC are parties to a voluntary petition filed under Chapter 11 of the Bankruptcy Code in a proceeding pending in the United States Bankruptcy Court for the District of Delaware. *In re Coach Am Group Holdings Corp*, Case No. 12-10010 (Bankr. D. Del) (KG) (Jointly Administered) (filed Jan. 3, 2012). TMS will be acquiring the assets of CUSA CC with no obligation to perform under contracts entered by that party except for contracts expressly assumed and assigned to TMS.

² TMS expresses no views on VCTC's contention that CUSA CC has contractual obligation to maintain service to VCTC. That is a contract matter between those two parties, which does not bear on TMS's rights. It also bears note that CUSA CC has the right under the Bankruptcy Code to reject the VCTC contract. *See* 11 U.S.C. § 365(a). CUSA CC's right to reject the VCTC contract is unimpaired by the contract's terms.

REPLY ARGUMENT

A. VCTC's Concerns About Potential Loss of Service Are in the Process of Being Addressed

VCTC's Request expresses concern that it may be left without service after June 30, 2012, the date which CUSA CC asserts is the termination date of its contract with VCTC.³ However, TMS is advised by counsel for CUSA CC that CUSA CC has offered to continue to provide service to VCTC through July 31, 2012, subject to the finalization of certain business terms now being negotiated. TMS is further advised by CUSA CC counsel that VCTC has not asked for service beyond that date.

Further, while TMS has no legal obligation under the contracts between VCTC and CUSA CC, TMS (through TMS West Coast, Inc.) has had preliminary discussions with VCTC about continuing service on a long-term or short-term basis following closing of the transaction. If these negotiations produce acceptable commercial terms, TMS will provide service for VCTC for an agreed period. If acceptable commercial terms cannot be agreed upon for a longer term arrangement, TMS is nonetheless willing to provide service under the contracts for a reasonable period of time to allow VCTC the opportunity to find a new contractor, if it has not done so already. TMS has so informed VCTC. In addition, TMS is aware that VCTC has been in negotiations with another operator with which VCTC might reach a deal to provide service once the CUSA CC service terminates.

In short, it appears that VCTC is actively working on options to solve the potential loss of service. There is no basis for the Board to effectively inject itself into

³ On June 12, 2012, CUSA CC communicated to VCTC that it would terminate the services provided by it under the agreements on June 30, 2012.

on-going negotiations on these matters or to delay the sale of the twelve bus companies being bought by TMS, as VCTC seeks. Those companies today offer a variety of services to persons throughout the United States. Coach America's Chapter 11 filing makes clear that the Coach America carriers are in a perilous financial situation. Accordingly, the Board should act promptly to approve the pending TMS Application in order to ensure continued preservation of service to the traveling public.

B. There is No Statutory or Public Interest Basis for the Delay VCTC Requests

VCTC's Request for an indefinite delay in Board action, or delay until June 30, 2015, is contrary to the time requirements of the relevant statute, 49 U.S.C. 14303, under which the TMS Application was filed. That statute requires that the Board publish notice of an application within 30 days after receipt of a complete application and solicit comments during a 45 day comment period. 49 U.S.C. 14303(c), (d). The same statute also places an outside time limit on the completion of any evidentiary proceedings (240 days) and the issuance of a final decision (180 days following the completion of evidentiary proceedings). 49 U.S.C., 14303(e). VCTC does not even address these statutory requirements, much less point to any legal basis on which its extraordinary request for a multi-year delay could be granted, even if it were in the public interest to do so.

Further, such a delay is plainly not in the public interest. As the Board is aware, CUSA CC and its Coach America parent along with certain related affiliates are debtors in possession in bankruptcy cases currently pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), jointly administered under

Case No. 12-10010 (KG). VCTC offers no reason whatever to believe that those proceedings will last through June 30, 2015, or that CUSA CC has the financial ability to continue operating through that date. Moreover, the Bankruptcy Court has already approved the sale of the CUSA CC assets (and those of other Coach America motor carriers) to TMS, finding such sale to be in the best interest of the debtor, its creditors and the estate. *See* Order Authorizing and Approving (I) Sale of Certain Assets of the Debtors Free and Clear of Liens, Claims, and Encumbrances and (II) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases entered on May 24, 2012, dkt # 760. The relief that VCTC seeks would effectively nullify the Bankruptcy Court's order approving the sale.

It is also significant that VCTC does not challenge that the criteria for approval of the permanent and interim applications for control filed in this matter have been met, including the interim control standard in section 14303(i) that failure to approve such control "may result in the destruction or injury to those properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public." If the Board agrees that these criteria have been met, then the TMS Applications should be granted without delay.

C. The Board Has No Jurisdiction over the Transportation at Issue

CUSA CC is an interstate motor passenger carrier that operates in California and nearby states, as noted at page 9 of the TMS Application. However, the transportation services provided to VCTC are local transit services. They are provided entirely in one county and in one state. Such services do not qualify as interstate transportation subject to the jurisdiction of the STB. *See* 49 U.S.C. 13501 (establishing Board's jurisdiction

over carriers operating beyond the boundaries of a single state). For the additional reason that the Board lacks jurisdiction over local transit service, it should not consider the extraordinary relief requested by VCTC.

CONCLUSION

For the reasons discussed above, TMS respectfully urges that the Board deny VCTC's request for delay and move expeditiously to process TMS' Application and Request for Interim Approval.

Respectfully submitted,



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June 28, 2012

VERIFICATION

I, George W. Hanthorn, Vice President of CUSA CC, LLC, verify under penalty of perjury, under the laws of the United States of America, that all information supplied in this Reply relative to CUSA CC is true and correct. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

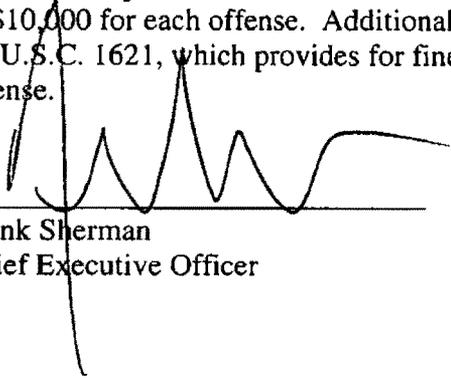


George W. Hanthorn, Vice President

Dated June 27, 2012

VERIFICATION

I, Frank Sherman, Chief Executive Officer of FSCS Corporation, verify under penalty of perjury, under the laws of the United States of America, that all information supplied in this Reply in connection with TMS West Coast, Inc. is true and correct. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.



Frank Sherman
Chief Executive Officer

Dated June 27, 2012

CERTIFICATE OF SERVICE

I certify that I have this 28th day of June, 2012 served a copy of the foregoing Verified

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