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SERVICE DATE – JULY 3, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21047<sup>1</sup>

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 BCCAE, LLC, CUSA CC, LLC, CUSA FL, LLC, CUSA GCBS, LLC, CUSA GCT, LLC, CUSA K-TCS, LLC, AND MIDNIGHT SUN TOURS, INC.

AGENCY: Surface Transportation Board.

ACTION: Notice of Finance Application.

SUMMARY: On June 4, 2012, Frank Sherman, an individual who controls motor passenger carriers, together with FSCS Corporation, a noncarrier holding company; TMS West Coast, Inc., a noncarrier holding company; Evergreen Trails, Inc. d/b/a Horizon Coach Lines (Evergreen), an interstate motor passenger carrier; and Cabana Coaches, LLC (Cabana), an interstate motor passenger carrier (collectively, Applicants) filed an application for approval under 49 U.S.C. § 14303 to acquire the assets of 12 separate interstate motor passenger common carrier subsidiaries of noncarrier Coach America Holdings, Inc. (Coach America)—American Charters, Ltd. (Charters); American Coach Lines of Jacksonville, Inc. (Coach-Jacksonville); American Coach Lines of Miami, Inc. (Coach-Miami); American Coach Lines of Orlando, Inc. (Coach-Orlando); CUSA ASL, LLC; CUSA BCCAE, LLC; CUSA CC, LLC; CUSA FL, LLC; CUSA GCBS, LLC; CUSA GCT, LLC; CUSA K-TCS, LLC; and Midnight Sun Tours, Inc. (Midnight Sun) (collectively, Coach America Subsidiaries)—and to consolidate certain of those assets into Evergreen and others into Cabana.

Specifically, the transaction contemplates that: (1) the assets of Charters; Coach-Jacksonville; Coach-Orlando; CUSA ASL, LLC; CUSA BCCAE, LLC; CUSA CC, LLC; CUSA FL, LLC; CUSA GCBS, LLC; CUSA GCT, LLC; and CUSA K-TCS, LLC, would be purchased by either FSCS or Evergreen to be operated under the Horizon Coach Lines name; and (2) the

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<sup>1</sup> 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 21047 TA). In a decision served on June 29, 2012, interim approval was granted, effective on the service date of the decision.

assets of Coach-Miami and Midnight Sun would be purchased by either FSCS or Cabana and consolidated into Cabana. Cabana would also adopt the d/b/a name "Horizon Coach Lines," and the assets consolidated into Cabana would be operated under that name. Under an asset purchase agreement that was entered into on May 18, 2012, see infra, another company controlled by Sherman, Transportation Management Services, Inc. (TMS), obtained the right to purchase the Coach America Subsidiaries. TMS is to assign its right to purchase to either FSCS or to Evergreen and Cabana. If TMS assigns its right to purchase to Evergreen and Cabana, Cabana will receive the right to purchase the assets of Coach-Miami and Midnight Sun and Evergreen will receive the right to purchase the assets of all of the other Coach America Subsidiaries identified above.

On June 6, 2012, Michael Yusim, an individual, filed a letter in opposition to the proposed transaction, asserting that the public interest would not be served until two cases before the Secretary of Labor (Secretary) are completed. On June 19, 2012, the Ventura County Transportation Commission (VCTC), a California public agency that operates a regional bus system with connections to municipal and local transit operators, filed a request for delay of the proposed acquisition of assets or for conditions on the transaction. Copies of this notice will be served on Mr. Yusim and VCTC. 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 17, 2012. Applicants may file a reply by September 4, 2012.

**ADDRESSES:** Send an original and 10 copies of any comments referring to Docket No. MCF 21047 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to Applicants' representative: David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

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

**SUPPLEMENTARY INFORMATION:** 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 18, 2012, and was approved by the bankruptcy court at a hearing on May 22, 2012.

On June 6, 2012, Mr. Yusim filed a letter in opposition to both the request for interim approval and the application for permanent authority. Applicants filed a reply to Mr. Yusim's letter on June 11, 2012, and Mr. Yusim responded on June 12, 2012. The basis for Mr. Yusim's

opposition relates to two cases alleging that Midnight Sun discriminated against him and another driver, both employed by Midnight Sun, for having accurately reported their hours of service. According to Mr. Yusim, the two cases are pending before the Secretary, but have been stayed by the bankruptcy court. Mr. Yusim requests that the Board disallow the sale of any subsidiaries of Coach America until the Secretary is allowed to hear the two cases.

On June 19, 2012, the Ventura County Transportation Commission (VCTC), a California public agency that operates a regional bus filed a pleading stating that CUSA CC, LLC, is in violation of its operating agreement with VCTC because it has given insufficient notice of its intent to terminate the services it provides for VCTC and its riders, and that the communications VCTC has had with CUSA CC, LLC and TMS have led only to a possibility that these services could continue through July 2012. VCTC requests either that the proposed acquisition of assets be delayed or that conditions be placed on the transaction to assure both adequate time to find a new contractor to provide these “essential” services and a surviving entity to charge with breach of contract.

We have, by separate decision, granted Applicants interim approval to acquire management and operational control of the assets under 49 U.S.C. § 14303(i) and the Board’s regulations at 49 C.F.R. § 1182.7(b). Those provisions permit us to grant interim approval to a transaction if it appears that a failure to do so may result in destruction of, or injury to, the involved properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public. See supra note 1. Because we have received timely comments in opposition to the application, however, we will not grant tentative authority under 49 C.F.R. § 1182.4(b). See 49 C.F.R. § 1182.6(a). Instead, we will institute a proceeding to address this matter, as well as to determine the merits of the application pursuant to 49 U.S.C. § 14303. Comments and responses are to be submitted as ordered below. See 49 C.F.R. §§ 1182.5 & 1182.6.

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. Comments must be filed by August 17, 2012. Applicants may file a reply to any comments by September 4, 2012.
2. This notice will be effective on its date of service.
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 Ave., S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 950 Pennsylvania Ave., N.W.,

Washington, DC 20530; (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Ave., S.E., Washington, DC 20590; (4) the Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Ave., N.W., Washington, DC 20580; (5) Michael Yusim, 7499 Eagle Point Dr., Delray Beach, FL 33446; and (6) Mitchel B. Kahn, 300 Esplanade Dr., Suite 1170, Oxnard, CA 93036.

Decided: June 28, 2012.

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