

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE

Docket No. MCF 21053

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

Digest:¹ The proposed purchase by Academy Express, L.L.C., of certain assets of the Charter Division of Conway’s Bus Service, Inc. (CBS), requires Board approval and authorization. Consequently, the Board is denying CBS’s motion to dismiss the application for lack of jurisdiction.

Decided: June 28, 2013

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. Applicants simultaneously filed a motion to dismiss the application, contending that, because of the size and nature of the transaction, it does not fall under the Board’s jurisdiction.² We are denying the motion to dismiss.

BACKGROUND

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

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).

² Although the motion was filed by CBS, it is being accepted as jointly filed because Academy’s manager, Francis Tedesco, filed a supporting verification with the motion.

travel service division that provides multi-day packaging of hotel accommodations, meals, and transport by private tour groups. The proposed 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 Federal Motor Carrier Safety Administration 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.

DISCUSSION AND CONCLUSIONS

Applicants contend that the purchase of CBS's Charter Division by Academy does not require prior Board authorization under §14303 for two reasons. First, asserting that the proposed transaction involves only the purchase of certain assets of CBS's Charter Division and that the Charter Division had less than \$2,000,000 in gross operating revenues for the 12-month period preceding the transaction, Applicants claim that, under 49 U.S.C. § 14303(g), the proposed transaction falls outside of the Board's jurisdiction and does not require our prior approval. We find their position to be incorrect.

While the prior approval requirement for transactions that involve the purchase of a motor carrier of passengers does not apply "to transactions involving motor carriers whose aggregate gross operating revenues were not more than \$2,000,000 during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties," 49 U.S.C. § 14303(g), Applicants have not used the correct base for measuring the \$2,000,000. Under the Board's regulations, this \$2,000,000 jurisdictional threshold applies broadly to the "revenues of all motor carrier parties and all motor carriers controlling, controlled by, or under common control with any party from all transportation sources (whether interstate, intrastate, foreign, regulated, or unregulated)." 49 C.F.R. § 1182.2(a)(5). In their submittal, Applicants' calculation of a sum below \$2,000,000 was limited just to the Charter Division assets, rather than the assets of all parties involved in the transaction. Applicants, however, have acknowledged that the aggregate gross operating revenues of the parties for the preceding 12 months together exceeded \$2,000,000, satisfying the \$2,000,000 jurisdictional threshold of § 14303(g).

Second, Applicants state that, under §14303, the Board is required to approve a transaction like the one at issue here if it finds that it is consistent with the public interest, weighing such factors as the effect of the transaction on the adequacy of transportation to the public, the total fixed charges that result, and the interests of affected carrier employees. Accordingly, Applicants contend that the intent of the statute is to protect consumers from motor carrier transactions that would be likely to impact the public. Asserting that the proposed transaction "is so small in scope as to be very unlikely to have any significant or meaningful impact on consumers, the motor carrier industry, or the public," Motion to Dismiss at 4,

Applicants argue that “the Board lacks jurisdiction to approve, deny, or otherwise restrict the Transaction.” Id. We disagree.

While the proposed transaction may be small in scope, it nevertheless involves “[a] purchase [of] property of another carrier by any number of carriers,” 49 U.S.C. § 14303(a)(2), and as such is subject to Board jurisdiction.³ That section does not limit the Board’s jurisdiction over the transaction based upon its scope, contrary to the Applicant’s implication. Because the proposed transaction is subject to Board jurisdiction and satisfies the jurisdictional threshold of § 14303(g), CBS’s motion to dismiss will be denied and a notice tentatively approving and authorizing this finance transaction will be served and published simultaneously in the Federal Register.

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

It is ordered:

1. The motion to dismiss is denied.
2. This decision is effective on the service date.

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

³ Applicants’ argument may support an exemption from regulation under 49 U.S.C. § 13541, but it does not support the contention that the Board lacks jurisdiction over the proposed transaction. In any event, Applicants have not chosen to pursue the exemption route here.