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SERVICE DATE – JULY 18, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-21028

DELIVERY ACQUISITION, INC.—PURCHASE—TRANSPORTATION
MANAGEMENT SYSTEMS, LLC AND EAST WEST RESORT
TRANSPORTATION, LLC

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: On June 19, 2008, Delivery Acquisition, Inc. (Delivery) an indirect subsidiary of Vail Resorts, Inc. (VRI), filed an application under 49 U.S.C. 14303 to acquire control, through purchase, of the properties of Transportation Management Systems, LLC f/k/a TMS, Inc.¹ (TMS) and East West Resort Transportation, LLC (EWRT). The application also sought Board authority for VRI to control Delivery, which will become a carrier upon its acquisition of the carrier assets, including operating authorities, of TMS and EWRT. Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by September 2, 2008. Applicants may file a reply by September 16, 2008. If no comments are filed by September 2, 2008, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F-21028 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to Delivery's representative: Mark A. Davidson, Dufford & Brown P.C., 1700 Broadway, Suite 2100, Denver, CO 80290-2101, and send one copy of comments to TMS's representative: Thomas J. Burke, Jr., Jones & Keller, P.C., 1625 Broadway, Suite 1600, Denver, CO 80202-4727.

FOR FURTHER INFORMATION CONTACT: Julia Farr (202) 245-0359 [Federal Information Relay (FIRS) for the hearing impaired: 1-800-877-8339].

¹ Pursuant to 49 CFR 365.413, *et seq.*, a notice of name change has been furnished contemporaneously to the Federal Motor Carrier Safety Administration reflecting that the correct name of the entity referred to as TMS, LLC in the Board's decision in Docket No. MC-F-20996, served January 10, 2003, is Transportation Management Systems, LLC.

SUPPLEMENTARY INFORMATION: Delivery is a Colorado corporation and is a newly created direct subsidiary of The Vail Corporation, which is a subsidiary of Vail Holdings, Inc., which is, in turn, a subsidiary of VRI, a Delaware corporation. VRI operates year round resorts in Colorado and controls, through The Vail Corporation, Grand Teton Lodge Company, a registered motor passenger carrier (MC-6259). Applicants seek authorization under 49 U.S.C. 14303(a)(5) for VRI, as a person in control of a carrier, to acquire control of the assets of EWRT and TMS through Delivery's transaction.

Following the transaction, Delivery will be a carrier. Delivery and Grand Teton Lodge Company will become affiliated carriers through VRI, although none of these carriers will be in control of the others.

Delivery will control, through purchase, the assets, including certificates of public convenience and necessity of EWRT and TMS² both of which are Delaware limited liability companies. TMS and EWRT are lessor and lessee, respectively, of the operating rights issued by the former Interstate Commerce Commission in MC-169714 and MC-174332, providing for special and charter operations in interstate and foreign commerce, and in MC-181367, providing for interstate and intrastate regular route operations. TMS and EWRT are also lessor and lessee, respectively, of an operating right issued by the Public Utilities Commission of the State of Colorado. Delivery will acquire the intrastate operating authority as a result of the transaction.

To consummate the transaction, TMS and EWRT propose to sell all their assets, including their interests in the operating rights to Delivery, for a purchase price of \$41.5 million, subject to certain adjustments.³

Applicants state that the 12-month aggregate gross operating revenues of all motor carriers controlling, controlled by, or under common control with any party from all transportation sources exceed the \$2 million jurisdictional threshold of 49 U.S.C. 14303(g).

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction 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 affected carrier employees.

Applicants have submitted information, as required by 49 CFR 1182.2(a)(7), to demonstrate that the proposed acquisition of control is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed transaction will improve the efficiency of transportation services available to the public, that the operations of the carriers involved will remain unchanged, that there are no fixed charges associated with the proposed transaction, and that the employees of EWRT and TMS will not be adversely affected. In addition, applicants have submitted all of the other statements and verifications required by 49 CFR 1182.8.

² TMS does business under the following trade names: Colorado Mountain Express and/or CME Premier and/or Premier VIP Transportation, and/or Resort Express.

³ The parties submitted a copy of the Asset Purchase Agreement, covering the entire transaction, with their application.

Additional information, including a copy of the application, may be obtained from applicants' representative.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

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. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.
2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.
3. This notice will be effective on September 2, 2008, unless timely opposing comments are filed.
4. A copy of this notice 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; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: July 14, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary