

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21062 TA

ACE EXPRESS COACHES, LLC, ET AL.

—CONTROL—

CERTAIN PROPERTIES OF EVERGREEN TRAILS, INC. D/B/A HORIZON COACH LINES

Digest:¹ This decision grants the request filed by Ace Express Coaches, LLC (Buyer), its affiliated parties, and Industrial Bus Lines, Inc. (IBL) for interim approval for the Buyer and IBL to manage and operate certain assets of Evergreen Trails, Inc. d/b/a Horizon Coach Lines.

Decided: April 8, 2015

On March 23, 2015, Ace Express Coaches, LLC (Buyer), and its affiliated parties (All Aboard America! Holdings, Inc. (AHI), Celerity AHI Holdings SPV, LLC (Celerity Holdings), Celerity Partners IV, LLC (Celerity Partners), and Industrial Bus Lines, Inc. (IBL)) (collectively, Applicants) applied for interim authority under 49 U.S.C. § 14303(i) and the Board's regulations at 49 C.F.R. § 1182.7(b) to permit the Buyer and IBL to manage and operate certain assets of Evergreen Trails, Inc. d/b/a Horizon Coach Lines (Seller). Interim approval would permit Applicants to complete the first phase of their proposed transaction pending a decision on their concurrently filed application for permanent authority.² The details of the entire proposed transaction will be outlined in our decision in Docket No. MCF 21062.

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 Section 14303(i) provides in relevant part as follows:

- (i) **Interim approval.**—Pending determination of an application filed under this section, the Board may approve, for a period of not more than 180 days, the operation of the properties sought to be acquired by the person proposing in the application to acquire those properties, when it appears that failure to do so may result in destruction of or injury to those properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public.

Specifically, the first phase of the proposed transaction contemplates that the Buyer and IBL would acquire control of the assets currently operated by the Seller, a federally regulated motor carrier of passengers in Colorado. These assets include the Seller's facilities, vehicles, leases, and contracts based in Colorado. The Seller currently provides both government and corporate shuttle services, scheduled shuttle services between Denver and two mountain resort towns in Colorado, and leisure travel services to, from, and within Colorado.³ IBL, a motor carrier of passengers (MC-133171) currently providing charter and contract services in Texas, New Mexico, and Arizona, would operate the assets in Colorado on a temporary basis. Applicants state that the Buyer is in the process of obtaining operating authority from the Federal Motor Carrier Safety Administration (FMCSA). Once the Board grants permanent authority to the Buyer and it has obtained FMCSA operating authority, the Buyer plans to take over the management and operation of the assets from IBL.

Applicants request that approval of interim control be granted by April 8, 2015, because the Seller plans to terminate its service with the assets subject to the transaction by April 14, 2015. According to Applicants, April 14, 2015, is the Seller's deadline for a \$500,000-payment to ensure continued public liability insurance coverage, and it is not prepared to pay the premiums to insure the operation of the assets for the short period prior to the consummation of the sale. Applicants argue that, if interim authority is granted by April 8, 2015, that would allow sufficient time for the assets to be transferred to IBL in advance of Seller's anticipated termination of services on April 14, 2015. IBL could then insure the assets under its liability policies and continue operating the assets. Furthermore, Applicants assert that, absent interim approval, the assets likely would diminish in value because service will have ceased, and the public will have been disadvantaged by the loss of continuous service.

Under 49 U.S.C. § 14303(i) and 49 C.F.R. § 1182.7(b), we find that Applicants have demonstrated that failure to grant interim approval of the proposed finance transaction may result in destruction of or injury to the properties being acquired or substantially interfere with their future usefulness in providing adequate and continuous service to the public.

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

³ The government shuttle services include services provided under a contract between the Seller and the U.S. Department of Defense (DOD). Under DOD regulations, the Buyer would have to wait one year from the date on which IBL begins operating this service before taking it over. In addition, the Seller plans to begin providing intercity passenger service within a few months under a contract with the Colorado Department of Transportation.

It is ordered:

1. The Buyer and IBL have interim approval to manage and operate the Seller's assets described above for a period of not more than 180 days. The application for permanent authority will be addressed in a separate decision.

2. This decision is effective on its service date.

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 Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & 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.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.