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SERVICE DATE – OCTOBER 16, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-21036

MR. ZEV MARMURSTEIN—  
CONTINUANCE IN CONTROL—R.W. EXPRESS, LLC

AGENCY: Surface Transportation Board.

ACTION: Notice of Finance Application.

SUMMARY: On September 16, 2009, Mr. Zev Marmurstein (Applicant), a noncarrier, filed an application under 49 U.S.C. 14303 to acquire control of R.W. Express, LLC (RW Express), a motor passenger carrier (MC-474958). Applicant is also seeking control, through an intermediate entity known as City Sights Twin, LLC (City Sights Twin), of Twin America, LLC (Twin America) once that carrier obtains motor carrier authority,<sup>1</sup> in Stagecoach Group PLC and Coach USA, Inc., et al.—Acquisition of Control—Twin America, LLC, STB Docket No. MC-F-21035 (STB served Sept. 18, 2009).<sup>2</sup> 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 November 30, 2009. Applicants may file a reply by December 15, 2009. If no comments are filed by November 30, 2009, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F-21036 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to Applicant's representative: David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Ave., N.W., Washington DC 20036.

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

SUPPLEMENTARY INFORMATION: Applicant is an individual who attained control of RW Express in 2003 when he attained a 48% interest in its stock. Applicant's sister owns a 3% share

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<sup>1</sup> Twin America is in the process of applying with the Federal Motor Carrier Safety Administration (FMCSA) to be a registered motor passenger carrier. It holds USDOT number 1924173 and has been assigned docket number MC-688284 by FMCSA.

<sup>2</sup> In that proceeding, the Board published notice of the application, but did not grant tentative authority under 49 CFR 1182.4(b).

and a corporate entity, Continental Air Transport Company I, owns a 49% share. Applicant states that he serves as the president of RW Express, directs the day-to-day operations, and is engaged in major managerial decisions. According to Applicant, RW Express operates a fleet of 65 vehicles and drivers and provides charter service within New York and between New York and points in nearby states.

Applicant is also the sole member and owner of City Sights Twin, a noncarrier formed for the purpose of owning an interest in Twin America. Applicant, along with City Sights Twin, Stagecoach Group PLC, its intermediate subsidiaries, Coach USA, Inc., and International Bus Services, seek control of Twin America in Stagecoach Group PLC and Coach USA, Inc., et al.—Acquisition of Control—Twin America, LLC, STB Docket No. MC-F-21035, served and published in the Federal Register on September 18, 2009 (74 FR 47985-86). The Board did not grant tentative authority in that proceeding, but instead instituted a proceeding to address matters raised by the application.

According to Mr. Marmurstein, he was previously unaware that under 49 U.S.C. 14303(a)(5), Board approval is required for the acquisition of control of a carrier by a person that is not a motor passenger carrier, but that controls any number of such carriers. Accordingly, he is filing this application in anticipation of Board approval in STB Docket No. MC-F-21035. If the filing in STB Docket No. MC-F-21035 is not approved, this request is moot.

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

Applicant has submitted the information required by 49 CFR 1182.2, and submitted a statement that the 12-month aggregate gross operating revenues of RW Express exceed the \$2 million jurisdictional threshold of 49 U.S.C. 14303(g). Applicant states that the proposed transaction will not affect the adequacy of transportation services available to the public because the charter/tour bus segment is competitive, the proposed transaction will not adversely impact competition, and this agency's prior finding regarding low entry barriers in this segment continues to be accurate. Applicant states that the proposed transaction will not adversely impact fixed charges because RW Express will continue to be controlled by Mr. Marmurstein as it was prior to this application. According to Applicant, the employees of RW Express will not be adversely affected. Additional information, including a copy of the application, may be obtained from Applicant's representative.

On the basis of the application, we find that the proposed acquisition 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](http://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 November 30, 2009, unless timely opposing comments are filed.
4. 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, 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: October 13, 2009.

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

Anne K. Quinlan  
Acting Secretary