SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21047 TA

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.

Digest:[1] This decision grants the request filed by Frank Sherman and various carrier and noncarrier entities controlled by him for interim approval to acquire management and operational control of the assets of 12 separate interstate motor passenger common carrier subsidiaries currently controlled by Coach America Holdings, Inc.

Decided: June 28, 2012

On June 4, 2012, Frank Sherman (Sherman), an individual who controls motor passenger common carriers, together with: FSCS Corporation (FSCS), 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) applied for interim approval under 49 U.S.C. § 14303(i) and the Board's regulations at 49 C.F.R. § 1182.7(b) to permit Applicants 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). Interim approval would permit Applicants to

[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).

manage and operate the assets of the named Coach America subsidiaries pending a decision on their concurrently filed application for permanent authority.[2]

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 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, <u>see</u> <u>infra</u>, 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.

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 U.S. Bankruptcy Court for the District of Delaware at a hearing on May 22, 2012. Applicants seek to operate the assets on an interim basis to ensure that the operations of the Coach America Subsidiaries may continue without service cessation, layoffs, or the loss or substantial devaluation of the companies' assets. This will enable passenger service to continue while Applicants' concurrently filed application for permanent authority under 49 U.S.C. § 14303 is pending. Applicants state that, absent interim approval, there is a risk that the Coach America Subsidiaries could encounter financial problems that would result in the loss of the

[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.

assets or in the substantial devaluation of those assets for the purposes of providing adequate and continuous service to the public.[3]

On June 6, 2012, Michael 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. Mr. Yusim states that two cases alleging that Midnight Sun discriminated against him and another driver employed by Midnight Sun for having accurately reported their hours of service are pending before the Secretary of Labor (Secretary) and have been stayed by the bankruptcy court. He 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.

When an application involving the consolidation, merger, or acquisition of control of the assets of motor carriers of passenger is filed, the Board under 49 U.S.C. § 14303(i) and 49 C.F.R. § 1182.7(b), may grant interim approval to the 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. Interim approval permits the applicant to operate the involved properties for a period of not more than 180 days.

Here, Applicants have made an adequate showing that interim approval is appropriate. Neither Mr. Yusim's letter in opposition nor VCTC's request for a delay or conditions, addresses any of the factors we consider when evaluating requests for interim approval. Thus, we conclude that neither Mr. Yusim's letter nor VCTC's request provide a basis for countering Applicants' showing. Accordingly, we find that Applicants have met the standard for interim approval under 49 U.S.C. § 14303(i) and 49 C.F.R. § 1182.7(b). However, to the extent valid leases and other contracts are associated with the assets being acquired, Applicants are reminded that these leases

[3] Applicants note that two of the Coach America Subsidiaries—CUSA GCBS, LLC, and CUSA K-TCS, LLC— whose assets Applicants intend to acquire have already discontinued operations. See Applicants' Request for Interim Approval at iii.

and other contracts must be honored consistent with the language in § 14303(i) concerning the provision "of adequate and continuous service to the public."

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 the destruction of, or injury to, the properties being acquired or may substantially interfere with their future usefulness in providing adequate and continuous service to the public. The Board reminds Applicants that this interim approval is temporary and that Applicants are responsible for ensuring that the Coach America Subsidiaries' assets are protected so that they can be returned to the Coach America Subsidiaries in the event that the Board ultimately denies Applicants' request for permanent authority.

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

<u>It is ordered</u>:

1. Applicants are authorized on an interim basis to acquire management control of the assets of the Coach America Subsidiaries, as identified above, under 49 U.S.C. § 14303(i) and 49 C.F.R. § 1182.7. 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, 950 Pennsylvania Avenue, N.W., Washington, DC 20530; (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (4) the Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Avenue, N.W., Washington, DC 20580; (5) Michael Yusim, 7499 Eagle Point Drive, Delray Beach, FL 33446; and (6) Mitchel B. Kahn, 300 Esplanade Dr., Suite 1170, Oxnard, CA 93036.

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