

SERVICE DATE – AUGUST 13, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21048 TA

EL EXPRESO GROUP, LLC
—ASSET ACQUISITION—CUSA EE, LLC D/B/A EL EXPRESO

Digest:¹ This decision grants the request for interim approval filed by El Expreso Group, LLC to acquire management and operational control of the assets of CUSA EE, LLC, an interstate motor passenger common carrier subsidiary currently controlled by Coach America Holdings, Inc.

Decided: August 10, 2012

On July 26, 2012, noncarrier El Expreso Group, LLC, its affiliate Vazquez Holdings, LLC, and their owner Juan Vazquez (collectively, El Expreso or Applicant), 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 Applicant to acquire management and operational control of the assets of an interstate motor passenger common carrier subsidiary of noncarrier Coach America Holdings, Inc. (Coach America)—CUSA EE, LLC d/b/a El Expreso (CUSA EE or Coach America Subsidiary).² Applicant seeks interim approval pending a decision on its previously filed application for permanent approval of the transaction.³

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 On August 2, 2012, El Expreso submitted a voting trust agreement for an informal Board staff opinion as to its sufficiency in protecting Applicant from any unlawful acquisition of control. See 49 C.F.R. § 1013.3. Under the proposed agreement, the membership interests in El Expreso will be placed, at or prior to the time of acquisition of the assets of CUSA EE, into a trust with an independent trustee. This action is necessary because Juan Vazquez controls another authorized interstate passenger carrier, Tornado Bus Company, Inc.

³ Notice of the application was served on July 12, 2012, and published in the Federal Register on July 13, 2012 (77 Fed. Red. 41,475).

Specifically, the transaction contemplates that Applicant would acquire the various assets of CUSA EE, including the vast majority of its equipment, various customer contracts, certain leased real property, various equipment leases, and good will. Following the acquisition, CUSA EE would wind down its business affairs and ultimately cease all operations. In its application, El Expreso has stated that it will utilize the acquired assets to continue much of the scheduled passenger transportation services previously performed by CUSA EE. El Expreso has further stated that it will utilize CUSA EE's interstate operating authority as well as its Texas intrastate authority and permits.

CUSA EE, along with other Coach America subsidiaries, is 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, CUSA EE filed a motion to sell substantially all of its assets and effectively to liquidate. Applicant seeks interim management and operational control so that it may continue operations of CUSA EE without service cessation or the loss or substantial devaluation of the company's assets. This will enable passenger service to continue while Applicant's previously filed application for permanent approval is pending. Applicant states that, absent interim approval, there is a risk that the assets will be devalued and that uninterrupted, quality motor passenger carrier service to the public may suffer.

Under 49 U.S.C. § 14303(i)⁴ and 49 C.F.R. § 1182.7(b), the Board finds that Applicant has 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.⁵

⁴ Section 14303(i) states in relevant part that “[p]ending 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.”

⁵ On June 13, 2012, Michael Yusim filed a letter in opposition to the permanent application to acquire the assets of CUSA EE. Mr. Yusim also filed a letter on July 30, 2012 in opposition to Applicant's request for interim authority. Mr. Yusim's statements in opposition fail to address any of the factors we consider when evaluating requests for interim approval (i.e., whether failure to grant such approval could result in the destruction of or injury to the subject assets or substantially interfere with their future usefulness in providing services to the general public). Moreover, the basis for Mr. Yusim's opposition relates to two cases pending before the U.S. Secretary of Labor that Mr. Yusim says have been stayed by the bankruptcy court. Those cases involve an entity called Midnight Sun Tours, Inc. (Midnight Sun). While the Midnight Sun bankruptcy is associated with the Coach America subsidiaries bankruptcy, Midnight Sun is not the entity whose assets Applicant seeks our authority to acquire in this proceeding. Therefore, (continued...)

The Board reminds Applicant that this interim approval is temporary and that Applicant is responsible for ensuring that CUSA EE's assets are protected so that they can be returned to CUSA EE in the event that the Board ultimately denies Applicant's request for permanent authority.

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

It is ordered:

1. Applicant is authorized on an interim basis to acquire management and operational control of CUSA EE 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 will be 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; and (5) Michael Yusim, 7499 Eagle Point Drive, Delray Beach, FL 33446.

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

the interim approval will have no direct effect on the status of the claims Mr. Yusim asserts as the basis for his objection. As a result, Mr. Yusim's letter has no impact on our determination here that Applicant has met the standard for interim approval under 49 U.S.C. § 14303(i) and 49 C.F.R. § 1182.7(b).