

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-21023

AVERITT EXPRESS, INC., DATS TRUCKING, INC., LAKEVILLE MOTOR EXPRESS, INC., LAND AIR EXPRESS OF NEW ENGLAND, PITT OHIO EXPRESS, LLC, CANADIAN FREIGHTWAYS, AND EPIC EXPRESS—POOLING AGREEMENT

Decided: January 31, 2008

By application filed on December 31, 2007, the following seven motor carriers, Averitt Express, Inc. (Averitt), DATS Trucking, Inc. (DATS), Lakeville Motor Express, Inc. (Lakeville Motor), Land Air Express of New England (Land Air), Pitt Ohio Express, LLC (Pitt Ohio), Canadian Freightways (CF), and Epic Express (Epic Express) (collectively, applicants), jointly seek approval of a proposed pooling agreement filed in accordance with 49 U.S.C. 14302 and the Board's requirements set forth at 49 CFR 1184. The Board will grant the application.

BACKGROUND

Averitt, DATS, Lakeville Motor, Land Air, and Pitt Ohio hold authority to transport general commodities, with the usual exceptions as noted in their operating certificates, between points in the United States, except Alaska and Hawaii, pursuant to authorities issued by the former Interstate Commerce Commission and/or the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA).<sup>1</sup> These motor carriers conduct direct service within the described regions: Averitt's operations extend throughout the Southeastern part of the United States and a portion of the Southwest;<sup>2</sup> DATS' regional operations primarily are conducted in the Western United States;<sup>3</sup> Lakeville Motor's operations extend throughout the

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<sup>1</sup> The operating authorities are: Certificate No. MC-121600 (Sub-No. 19) for Averitt; Certificate No. MC-213580 (Sub-No. O-C) for DATS; Certificate No. MC-97932 (Sub-No. 13) and Permit No. MC-97932 (Sub-No. 12) for Lakeville Motor; Certificate No. MC-237357 (Sub-No. 1-C) for Land Air; Certificate No. MC-30136 (Sub-No. 2) and Permit No. MC-30136 (Sub-No. 4) for Pitt Ohio.

<sup>2</sup> This includes the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

<sup>3</sup> This includes the states of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington.

Midwest;<sup>4</sup> Land Air's operations are primarily in the Northeast;<sup>5</sup> and Pitt Ohio's principal operations are centered in the Middle Atlantic States.<sup>6</sup> CF and Epic Express are commonly owned Canadian-based carriers conducting transportation operations by motor carriage within Canada and the United States.<sup>7</sup> Pursuant to operating authorities issued by the Canadian regulatory authorities and FMCSA,<sup>8</sup> CF and Epic Express engage in the transportation of property, except household goods, in interstate commerce.

The intent of this application is to enable the applicants to pool their respective operating territories into a service network covering the continental United States. In this way, each carrier would be able to more efficiently and economically operate in its principal service area and would be able to broaden its services to all other regions through the more efficient use of the other participating motor carriers. The applicants state that the proposed agreement is scheduled to become effective on March 1, 2008. The proposed arrangement is discussed in more detail below.

The applicants generally conduct regional operations with the bulk of their transportation services concentrated in separate territories. Through interline arrangements, traffic moves into and out of applicants' territories. However, according to applicants, those arrangements have not enabled applicants to provide the integrated and efficient services they desire to provide to their customers. Through the proposed pooling operation, the applicants intend to establish a transportation network of service providers consisting of strong and reliable asset-based regional carriers. This network, which would be known as the Reliance Network, would coordinate applicants' information technology, administrative functions, sales and marketing efforts, and operations. Applicants indicate that this would require the development of an internal and external communication plan, the training of representatives for the partnership, and the institution of ways to cross-sell and promote each other's services.

Applicants state that, operationally, they would establish standard transit times for the network. To facilitate the movement of freight between the carriers, applicants have identified

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<sup>4</sup> This includes the states of Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

<sup>5</sup> This includes the states of Connecticut, Massachusetts, Maine, New Hampshire, New York, Rhode Island, and Vermont.

<sup>6</sup> This includes the states of Delaware, Maryland, New Jersey, Virginia, and West Virginia, and also includes service to Indiana, Michigan, and Ohio.

<sup>7</sup> CF's principal operations are between points in Western Canada and Arizona, California, Illinois, Oregon, Nevada, Washington, and Wisconsin. Epic Express conducts its principal operations between points in Eastern Canada and Illinois and Wisconsin.

<sup>8</sup> The operating authorities are: Certificates Nos. MC-171192-C and MC-364417-C.

optional interchange facilities.<sup>9</sup> At the interchange facilities, traffic originating from or destined to the various territories beyond the applicants' respective direct service operations would be brought by a participating carrier to the appropriate facility where the freight would be pooled with other shipments and given to the carrier providing service to the involved destinations. Applicants indicate that guidelines are being developed for sharing equipment, and its repair, to maximize the efficient and economical use of the vehicles.

Applicants indicate that the individual carriers would negotiate the through rates for traffic originating in their respective territories. Applicants state that revenues would be shared based on a standard division formula, with the individual participating carriers modifying the split of the revenues with the other carriers as appropriate. The originating carrier would identify payment and claim settlement processes.

Applicants state that access to key information and internal systems of the participating carriers would be shared so that customers would be better served and supported. Moreover, a single system would be developed for the exchange of partnership data and information. Also, information technology would be designed to create a seamless transaction for the carriers' customers that would provide tracing and tracking of shipments, the processing of claims, customer service, invoicing, service reporting, transit times, recruiting guides and updates, and the handling of collect-on-delivery shipments.

Applicants state that they would continue to honor their interline arrangements with other carriers that require their services for deliveries to direct service points in their regional operations. Moreover, they state that they would continue to honor interline arrangements specified by their shipper and transportation intermediary customers. Applicants assert that the Reliance Network would offer better and more responsive transportation services to the carriers' customers from and to service points beyond the current regional operations of the participating carriers, and would enable the applicants to offer service superior to that which has been achieved through typical interline arrangements.

Applicants submit that the pooling arrangement would enable them to be more competitive with national carriers and existing transportation networks offering integrated transportation services on a nationwide basis. Applicants also assert that the coordination and integration of their transportation services would enable them to provide a seamless service to their customers, enhance the efficiency of their operations, provide greater control over the movements, increase their physical capacity to meet customers' service demands, expand the territorial scope of their transportation service, and make them more financially sound.

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<sup>9</sup> At present, these include jointly operated facilities at Chicago, IL, St. Louis, MO, Washington, PA, Newburgh, NY, North Platte, NE, and St. Paul, MN. Other facilities at which freight would be pooled would be established as needed.

Applicants point to the highly competitive nature of the trucking industry, following the entrance of hundreds of motor carriers into the marketplace through deregulation. Applicants claim that within the regional territories served by the participating carriers there would be little or no significant competitive impact on other carriers. Applicants would continue to provide direct service in competition with the other motor carriers already doing business within the region. Applicants note that, because of the large number of existing carriers operating in the regions served by the applicants, competing carriers would have the opportunity to enter into similar interline arrangements to provide services competitive with those proposed by applicants. Also, applicants assert that competition would be improved by their proposal because, despite being regional carriers, they would be able to compete with the national carriers, the transportation networks arranged by transportation intermediaries and other motor carriers, and intermodal operations.

Finally, applicants assert that approval of the pooling agreement would not negatively affect either the quality of the human environment or the conservation of energy resources. Rather, applicants state that the network of carriers and consolidation of movements that would result from the proposed transportation alliance would provide environmental benefits by reducing the number of truck movements necessary to transport the shipments, thereby reducing highway congestion, emissions, and fuel consumption.

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14302(a), Board approval is required before motor carriers of property may “pool or divide traffic or services or any part of their earnings.” Under section 14302(c)(2), prior to the effective date of the agreement, the Board must determine whether the agreement is of major transportation importance and whether there is substantial likelihood that the agreement would unduly restrain competition.<sup>10</sup> If the Board determines that neither of these two factors exists, the Board is required to approve the agreement without a hearing.

The Board finds that the proposed transaction is not of major transportation importance. The Reliance Network would include participation by a small number of regional motor carriers. Applicants project that the Reliance Network would move approximately 300,000 shipments in 2008, which represents only a small fraction of domestic motor carrier shipments. Moreover, there are many other motor carriers providing services similar to the participating members, including large motor carrier companies and networks that already provide service nationwide, in addition to entities providing service via other modes of transportation.

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<sup>10</sup> Otherwise, the Board must hold a hearing under 49 U.S.C. 14302(c)(3), to determine whether the agreement “will be in the interest of better service to the public or of economy in operation and will unduly restrain competition,” and the Board may impose such terms and conditions as it finds “just and reasonable.”

The Board also finds that the agreement would not unduly restrain competition. Applicants would continue to provide direct service in competition with the other motor carriers doing business in the regions they serve. The record indicates that, because of the large number of carriers operating throughout the regions served by the applicants, many opportunities exist for competing carriers to engage in interline arrangements to provide services competitive with those proposed by applicants. To the extent that the Reliance Network would supplant any existing interline arrangements, given the number of carriers engaged in interstate commerce, those interline carriers losing connections should be able to arrange other service connections to meet the service needs of their customers. In addition, these carriers could seek approval for similar pooling arrangements as that proposed by applicants if they considered that to be a desirable alternative. Under the proposed transaction, the national transportation system would have the benefit of an efficient network able to compete efficiently and economically with existing national carriers, the transportation networks arranged by transportation intermediaries, and other motor carriers. Moreover, as the pooling operation gets under way, the applicants indicate that, consistent with the retention of competition, they would be willing to include suitable, authorized, and qualified nonpool carriers capable of providing the services and conducting the operations necessary to meet the Reliance Network's criteria in the pool.

The proposed transaction would not result in collective ratemaking. Rates would be determined by the originating carrier after independent negotiations with customers, with revenues split among participating carriers subject to an established formula.

In short, the Board concludes, on the basis of the record presented, that the proposed agreement would not be of major transportation importance and would not unduly restrain competition. The terms of the agreement are consistent with the applicants' intentions. The agreement outlines the members' plan to streamline their operations and collaborate where appropriate. It would run for a term of 5 years from its effective date (1 day after a Board order granting pooling authority) and would be renewable for successive 1-year periods absent timely notification of dissent from a participating member. The agreement would permit participating members to withdraw upon timely notification to the other members, and would provide for the remaining members' continuation of the arrangement. The agreement also provides for the possibility of expanding membership in the pool to other qualified carriers. These terms appear to be just and reasonable. Accordingly, the Board approves the proposed agreement without hearing.

The Board will retain jurisdiction to require submission of additional information should the Board find it necessary in the future. If the Board finds at any time that the transaction has become a major one or is likely to unduly restrain competition, the Board retains the power to suspend operation of the pool during the pendency of a public hearing concerning the criteria set forth in 49 U.S.C. 14302 and to impose such terms and conditions, if any, as are just and reasonable.

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

It is ordered:

1. The pooling of services, traffic, and revenues by the applicants described above is approved and authorized to the extent specified in the application, the pooling agreement, and this decision.

2. This decision is effective on its date of service.

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; 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, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey. Commissioner Buttrey did not participate.

Anne K. Quinlan  
Acting Secretary