

40269  
EB

SERVICE DATE – OCTOBER 23, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-21037

FRANCIS W. SHERMAN—CONTROL—EVERGREEN TRAILS, INC., HORIZON COACH  
LINES, LTD., AND CABANA COACHES, LLC

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Francis W. Sherman (FWS), a noncarrier, has filed an application under 49 U.S.C. 14303 to acquire indirect control (through stock purchase) of Evergreen Trails, Inc. (Evergreen), and Horizon Coach Lines, Ltd. (Horizon), and to continue in control of Cabana Coaches, LLC (Cabana). Persons wishing to oppose the 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 December 7, 2009. Applicant may file a reply by December 22, 2009. If no comments are filed by December 7, 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-21037 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to applicant's representatives: Michael L. Jennings, Esq., Ober Kaler Grimes & Shriver, a Professional Corporation, 120 East Baltimore Street, Baltimore, MD 21202, and Edward D. Greenberg, Esq., GKG Law, P.C., 1054 Thirty-First Street, N.W., Washington, DC 20007.

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

SUPPLEMENTARY INFORMATION: FWS currently controls one Federal Motor Carrier Safety Administration (FMCSA) registered passenger carrier, Cabana (MC-646780), a Florida limited liability company. Under the proposed transaction, FWS is seeking to acquire indirect control of Evergreen (MC-107638), a Washington corporation, and Horizon (MC-144339), a corporation formed under the laws of the Province of British Columbia, Canada (collectively, the

acquired carriers),<sup>1</sup> both of which are FMCSA registered motor passenger carriers, and to continue in control of Cabana. According to FWS, pursuant to the Board's rules at 49 CFR 1013, all of his interests in Cabana currently are being held in a voting trust to avoid any unlawful control pending disposition of this proceeding. FWS states that the annual aggregate gross operating revenues of Cabana and the acquired carriers exceed the \$2 million jurisdictional threshold of 49 U.S.C. 14303(g).

Following approval and consummation of the transaction, FWS states that he will indirectly own all of the outstanding shares of stock in Evergreen and Horizon through his ownership of all of the outstanding shares of stock in TMS West Coast, Inc. (TMS), a Washington corporation, and TMS Canada Holdings Ltd. (TMS-CA), a British Columbia corporation. FWS indicates that TMS will acquire all of the outstanding shares of Evergreen and TMS-CA will acquire all of the outstanding shares of Horizon.

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

Applicant has submitted information, as required by 49 CFR 1182.2(a)(7), to demonstrate that the proposed acquisition of control is consistent with the public interest under 49 U.S.C. 14303(b). Applicant states that the proposed transaction will have no impact on the adequacy of transportation services available to the public, that the operations of the carriers involved will remain unchanged, that there are no fixed charges associated with the proposed transaction, and that no carrier employees will be adversely affected by the transaction, except for a small number of administrative employees who may lose their positions so that the acquired carriers can operate with increased efficiency. In addition, applicant has submitted all of the other statements and certifications required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from applicant's representatives.

On the basis of the application, we find that the proposed acquisition of control 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

---

<sup>1</sup> FWS states that, prior to this transaction, the acquired carriers were a part of the common control structure of Holland America Line Inc. See Holland America Line Inc.—Acquisition—Royal Hyway Tours, Inc., STB Docket No. MC-F-21033 (STB served Apr. 3, 2009); Holland America Line Inc.—Control—Westours Motor Coaches, Inc., Evergreen Trails, Inc., Westmark Hotels of Canada, Ltd., Horizon Coach Lines, Ltd., and Discover Alaska Tours, Inc., STB Docket No. MC-F-21026 (STB served Mar. 21, 2008).

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.”

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 on December 7, 2009, unless timely opposing comments are filed.

4. A copy of this notice 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 19, 2009.

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

Anne K. Quinlan  
Acting Secretary