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SERVICE DATE - MARCH 19, 1999

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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC-F-20944]

K.C. Irving, Limited and S.M.T. (Eastern), Limited--Control--Acadian Lines, Limited, Nova Charter Service Incorporated, S.M.T. (Eastern), Inc., and S.M.T. (Eastern), Limited

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: K.C. Irving, Limited (Irving), a noncarrier holding company that controls several motor passenger carriers, and its subsidiary, S.M.T. (Eastern), Limited (SMT Limited), a motor passenger carrier, filed an application under 49 U.S.C. 14303 for control of Acadian Lines Limited (Acadian), Nova Charter Service Incorporated (Nova), S.M.T. (Eastern), Inc. (SMT Inc.), and SMT Limited, all motor carriers of passengers or, in the case of SMT Inc., an entity that intends to become a motor carrier of passengers. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8.¹ The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

¹ Revised procedures governing finance applications filed under 49 U.S.C. 14303 were adopted in Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers, STB Ex Parte No. 559 (STB served Sept. 1, 1998).

DATES: Comments must be filed by April 5, 1999. Applicants may file a reply by April 20, 1999. If no comments are filed by April 5, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F-20944 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. In addition, send one copy of comments to applicants' representatives: William C. Evans and John R. Mietus, Jr., Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, 901 15th Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600.

[TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Irving and SMT Limited currently control several motor passenger carriers. In the application, Irving and SMT Limited,² in which Irving historically has held an interest and currently holds a controlling interest, state that SMT

² SMT Limited is a New Brunswick corporation. It holds federally issued operating authority in Docket No. MC-107078, allowing it to conduct passenger transportation over a regular route between Calais and Bangor, ME, and to conduct charter and special operations between certain U.S./Canada border crossings and certain points in the United States. SMT Limited operates a fleet of 31 coaches and employs 133.

Limited assumed control of Acadian³ and Nova⁴ through a stock transaction that was consummated in December 1995. Applicants indicate that their failure to obtain approval for this common control was unintentional, and having discovered this unresolved control issue, Irving and SMT Limited now seek Board authority to control these carriers.

Irving and SMT Limited also seek Board authority to control SMT Inc.,⁵ which intends to obtain the operating authority currently held by Royal Blue Tours, Inc. (Royal Blue)⁶ through a transfer of authority to be requested from the Federal Highway Administration. The parties intend to place the stock of SMT Inc. in a voting trust to permit consummation of the transaction pending Board approval of the application.

Applicants state that granting the application will not result in any significant changes to carrier operations that are now being conducted and will not reduce competitive options available to the traveling public. They assert that each carrier occupies a distinct

³ Acadian is a Nova Scotia corporation. It holds federally issued operating authority in Docket No. MC-204938, allowing it to conduct charter and special operations between points in the U.S. (except HI). Acadian operates a fleet of 15 coaches with approximately 70 employees.

⁴ Nova is a Nova Scotia corporation. It holds federally issued operating authority in Docket No. MC-126280, allowing it to conduct charter and special operations between certain U.S./Canada border crossings and points in the U.S. (except AK and HI) and between points in the U.S. Nova operates a fleet of 23 coaches with about 30 employees.

⁵ SMT Inc., a Delaware corporation, plans to obtain from Royal Blue interstate operating authority issued in Docket No. MC-220952. That authority allows Royal Blue to conduct charter and special operations between points in the U.S. (except HI). Royal Blue operates a fleet of 6 coaches.

⁶ Royal Blue is a Florida corporation providing charter service primarily in Florida.

market niche, particularly with respect to their limited U.S. operations, and faces substantial competition from other bus companies, private vehicles and other modes of transportation.

Applicants also submit that granting the application will produce, or continue to produce, substantial benefits. In particular, applicants state that closer coordination of motorcoach fleets will permit the companies to deploy buses to meet consumer demands more effectively. Applicants add that the proposed transaction will not impact the employees of any of the carriers adversely.

Applicants certify that: (1) None of the carriers holds an unsatisfactory safety rating from the U.S. Department of Transportation;⁷ (2) each carrier has sufficient liability insurance; (3) none of the carriers is domiciled in Mexico or owned or controlled by persons of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicants' representatives.

Under 49 U.S.C. 14303(b), we 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.⁸ The prior consummation of the transaction involving Acadian and Nova does not bar approval of the application under section 14303 if the evidence establishes that the transaction would be consistent with the

⁷ Acadian, Nova, and SMT Limited hold satisfactory ratings and Royal Blue is unrated.

⁸ The parties expect no change in the fixed charges associated with each of the carriers.

public interest in other respects, and for the future. Approval is granted in such circumstances when the record contains strong affirmative evidence of public benefits to be derived from the resulting control, warranting the view that the public should not be penalized by being deprived of those benefits. Moreover, in this case, the record shows an absence of intent to flout the law or of a deliberate or planned violation.⁹ See Kenosha Auto Transport Corp.--Control, 85 M.C.C. 731, 736 (1960).

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.¹⁰ If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

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

⁹ Applicants recognize that they should have sought our approval sooner. Under these circumstances, the Board does not intend to pursue enforcement actions against applicants for the previous unauthorized common control.

¹⁰ Under revised 49 CFR 1182.6(c), a procedural schedule will not be issued if we are able to dispose of opposition to the application on the basis of comments and the reply.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.
2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.
3. This decision will be effective on April 5, 1999, unless timely opposing comments are filed.
4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; and the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: March 16, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary