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SERVICE DATE – FEBRUARY 17, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21059

ACADEMY EXPRESS, L.L.C.—ACQUISITION OF THE PROPERTIES OF GO BUS LLC
AND ITS AFFILIATE, MCIZ CORP.

Digest:¹ This decision grants the request filed by Academy Express, L.L.C., for approval to acquire certain properties of two motor carriers, Go Bus LLC and MCIZ Corp.

Decided: February 12, 2015

On July 24, 2014, Academy Express, L.L.C. (Academy Express), a motor carrier of passengers, applied for approval under 49 U.S.C. § 14303 to acquire certain properties of Go Bus LLC (Go Bus) and its affiliate, MCIZ Corp. (MCIZ), both motor carriers of passengers. In a notice served and published in the Federal Register on September 24, 2014 (79 Fed. Reg. 57,180), the Board tentatively approved the application, subject to the filing of opposing comments. Academy Express, L.L.C.—Acquis. of the Props. of Go Bus LLC & Its Affiliate, MCIZ Corp. (2014 Decision), MCF 21059 (STB served Sept. 24, 2014).

Copies of the notice were served on the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA); the U.S. Department of Justice, Antitrust Division; and the U.S. Department of Transportation, Office of the General Counsel. A comment was filed on November 10, 2014, by the International Association of Sheet Metal, Air, Rail and Transportation Workers, Transportation Division (SMART TD), opposing Academy Express's acquisition of certain properties of Go Bus and MCIZ. On November 25, 2014, Academy Express filed a reply.²

BACKGROUND

Academy Express primarily provides charter bus and contract carrier services for associations or other groups in interstate commerce in the states of New York and New Jersey,

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 Pursuant to the 2014 Decision, replies were due on November 24, 2014. When filing its reply, Academy Express also filed a request to late-file. We will accept this late-filed reply in the interest of compiling a complete record and because no party will be prejudiced.

and to a lesser extent in the District of Columbia, Virginia, Maryland, Pennsylvania, Connecticut, Rhode Island, and Massachusetts, and commuter line service between New Jersey and New York. Go Bus and MCIZ are primarily engaged in providing special and charter operations to and from places in the state of New York. Go Bus also provides regular-route service between New York, N.Y. (New York City), and Cambridge and Newton, Mass., and commuter line service between Glen Cove, N.Y., and New York City. MCIZ, pursuant to a contract with the New York City Board of Education, provides transportation to students and teachers on day trips from and to places in New York for sports or other events. Academy Express also states that MCIZ has a bus stop in New York City, and licenses for two park-and-ride facilities in Nassau and Suffolk Counties, N.Y.

According to Academy Express, Go Bus and MCIZ have decided to cease acting as motor carriers. Under the proposed transaction, Academy Express seeks to acquire the interstate and intrastate operating authorities of Go Bus, its customer lists, telephone numbers, websites, and trade name. Academy Express also seeks to acquire MCIZ's contract with the New York City Board of Education, its bus stop in New York City, and its licenses for the two park-and-ride facilities in Nassau and Suffolk Counties, N.Y.³

SMART TD alleges that the proposed acquisition is not in the public's best interest because of the safety report records of Academy Express, Go Bus, and MCIZ, as documented by FMCSA. While acknowledging that all three carriers have a "satisfactory" rating from FMCSA, in the attachments to its comments, SMART TD enumerates each carrier's reported safety violations over a multiple-year period. SMART TD asserts that the proposed transaction could compound Academy Express's alleged safety issues and is not in the public interest.

Academy Express responds that there is no evidence to support SMART TD's concern that the proposed transaction could compound alleged preexisting safety issues. Academy Express states that the proposed transaction does not involve membership or equity interests of Go Bus or MCIZ's owners and, thus, SMART TD's argument that the proposed transaction could compound Academy Express's safety issues has no weight. According to Academy Express, the proposed transaction relates only to specific designated assets, such as customer lists, websites, and trade names. Academy Express also argues that the sole applicable safety fitness standard is FMCSA's, under which Academy Express has received a satisfactory rating.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of the affected carrier employees. Under 49 C.F.R. § 1182.6(a), the 2014 Decision, which tentatively approved the transaction pursuant to this statutory standard, was automatically vacated upon the filing of SMART TD's opposing comment. Under

³ According to the application, Academy Express would not acquire Go Bus and MCIZ's buses. Instead, those buses would be conveyed to a company called ABC Companies, a noncarrier.

49 C.F.R. § 1182.6(c), we find that we are able to make a determination on the current record, and that no additional evidence is required. Applying the standard set forth above, we will grant Academy Express's application.

The concerns raised by SMART TD do not alter the Board's prior finding regarding the transaction's effect on adequacy of transportation to the public expressed in the 2014 Decision. Though SMART TD alleges that Academy Express, Go Bus, and MCIZ have considerable safety violations, SMART TD does not dispute that each has a satisfactory safety rating from FMCSA. SMART TD does not allege that the cited safety violations are beyond the scope of what FMCSA, the agency charged with regulating the safety of motor carriers, may consider in determining a safety rating. In essence, SMART TD is asking the Board to substitute its judgment of the safety fitness of Academy Express, Go Bus, and MCIZ for that of FMCSA, something we will not do. A copy of the application initiating this case was served on FMCSA, and it has not opposed or otherwise commented upon the application. Thus, SMART TD has not shown that the FMCSA safety ratings (satisfactory) of Academy Express, Go Bus, and MCIZ have an adverse impact on any of the factors that we are directed to consider.

The Board finds under 49 U.S.C. § 14303(b) that the proposed transaction is consistent with the public interest and should be authorized.

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

It is ordered:

1. Academy Express's request to late-file a reply to SMART TD's comment is granted, and the reply is accepted into the record.
2. The proposed transaction is approved.
3. This decision is effective on its service date.
4. 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, 10th Street & 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; and (4) the International Association of Sheet Metal, Air, Rail and Transportation Workers—Transportation Division, 24950 Country Club Blvd., Suite 340, North Olmsted, OH 44070.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.