

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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December 18, 2012
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STB DOCKET NO. MC-F-21047

**FRANK SHERMAN, FSCS CORPORATION, TMS WEST COAST, INC.,
EVERGREEN TRAILS, INC. AND CABANA COACHES, LLC – ACQUISITION
AND CONSOLIDATION OF ASSETS – AMERICA CHARTERS, LTD.,
AMERICAN COACH LINES OF JACKSONVILLE, INC., AMERICAN COACH
LINES OF MIAMI, INC., AMERICAN COACH LINES OF ORLANDO, INC.,
CUSA ASL, LLC, CUSA BCCA, LLC, CUSA CC, LLC, CUSA FL, LLC, CUSA
GCBS, LLC, CUSA GCT, LLC, CUSA K-TCS, LLC, AND MIDNIGHT SUN
TOURS, INC.**

REPLY TO PETITION TO REOPEN

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Coaches, LLC

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SURFACE TRANSPORTATION BOARD**

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FRANK SHERMAN, FSCS CORPORATION, TMS WEST COAST, INC., EVERGREEN TRAILS, INC. AND CABANA COACHES, LLC – ACQUISITION AND CONSOLIDATION OF ASSETS – AMERICA CHARTERS, LTD., AMERICAN COACH LINES OF JACKSONVILLE, INC., AMERICAN COACH LINES OF MIAMI, INC., AMERICAN COACH LINES OF ORLANDO, INC., CUSA ASL, LLC, CUSA BCCAE, LLC, CUSA CC, LLC, CUSA FL, LLC, CUSA GCBS, LLC, CUSA GCT, LLC, CUSA K-TCS, LLC, AND MIDNIGHT SUN TOURS, INC.

REPLY TO PETITION TO REOPEN

Evergreen Trails, Inc. (“Evergreen”) and Cabana Coaches, LLC (“Cabana”), as well as related non-carrier applicants (collectively “Applicants”), hereby respond to the November 30, 2012 Petition to Reopen filed by Livery Operators Association of Nevada (“LOA”) in this proceeding. LOA’s Petition does not satisfy the standards for reopening under the Board’s rules. Rather, it is no more than a thinly-disguised effort to protect LOA’s members from Evergreen’s use of motorcoach assets that the Board authorized Evergreen to control in this proceeding so that those members can keep the motorcoach business opportunities in the Las Vegas area to themselves. There is no legal or policy basis on which the Board should promote the anti-competitive goal that they seek.

On June 4, 2012, Applicants filed an application (“Application”) under 49 U.S.C. § 14303 and the Surface Transportation Board’s (“Board”) regulations at 49 C.F.R. Part 1182 to acquire the assets (including business good will and permits) of 12 separate interstate motor passenger common carrier subsidiaries of non-carrier Coach America Holdings, Inc. (“Coach

America”), an entity in Chapter 11 bankruptcy. As relevant here, the Application made clear that Evergreen sought to acquire control of substantially all of the assets, including intrastate operating authorities, of the Nevada-based Coach America subsidiary CUSA K-TCS, LLC (“K-TCS”), which had ceased business and is also in Chapter 11 bankruptcy. The Application stated that the assets would be consolidated into Evergreen.

On September 6, 2012, the STB issued a decision approving the acquisition of control of the Coach America assets by Applicants, including the K-TCS assets. *Frank Sherman, FSCS Corporation, TMS West Coast, Inc., Evergreen Trails, Inc. and Cabana Coaches, LLC – Acquisition and Consolidation of Assets – American Charters, Ltd., et al.* STB Docket No. MC-F-21047 (served September 6, 2012) (“September 6 Decision”). The transaction approved by the Board was thereupon consummated on September 12, 2012.

In the Application, Evergreen stated that “Evergreen does not plan to resume the services previously offered by [K-TCS]”. Application at 5 n.4. This was noted too in the September 6 Decision at page 3, fn. 4. However, Evergreen has now stated its intention to use the K-TCS assets that it was allowed to control to conduct Evergreen operations in Nevada. The Board was so informed the Board in a letter filed on October 9, 2012. Evergreen so advised the Board in the face of LOA’s pending efforts before the Nevada Transportation Authority to oppose that agency’s ministerial action of transferring, in response to the September 6 Decision, K-TCS’s operating authority to Evergreen.

While it was aware or should have been aware of Evergreen’s plans to acquire the K-TCS assets as early as filing of the Application in June 2012, it was not until its November 30 Petition to Reopen that LOA decided to make representations on this matter to the Board. LOA offers no explanation for this delay, which offers a sufficient basis on its own to deny LOA any relief.

Further, under the Board’s regulations, “[a] petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Board make such a determination.” 49 C.F.R. § 1115.4 (emphasis added). LOA argues that its Petition is based on new evidence and material error. *See* Petition at 3, 7. However, LOA fails to show the existence of any new evidence or material error.

LOA’s Petition alleges that Evergreen intentionally misled the Board in its Application by falsely suggesting that Evergreen had no intention to conduct operations in Nevada and that Evergreen’s subsequent announcement of its plans to conduct operations in Nevada constitutes new evidence. As explained further below, Evergreen did not mislead the Board. While the Application stated that Evergreen would not resume the discontinued operations of Nevada-based K-TCS, by explicitly requesting authority to acquire the assets and Nevada operating authorities of that motor passenger carrier Evergreen left no doubt that it might choose to conduct Nevada operations, even if not resuming the terminated operations of K-TCS. Thus, Evergreen’s subsequent announcement of its intention to conduct operations in Nevada is not “new evidence” – it is instead merely the logical outgrowth of Evergreens’ unambiguous request to the Board to control the assets of a Nevada carrier and its operating certificates.

LOA also argues that the Board does not have jurisdiction over Evergreen’s acquisition of K-TCS’s assets because only a portion of K-TCS’s services were interstate services. Presumably, LOA believes the Board’s previous finding of jurisdiction over the Application constitutes material error. However, as explained further below, it is the NTA rather than the Board that lacks jurisdiction over this matter. Because LOA sat on its right, and now offers no

new evidence or evidence of material error, there is no basis for the Board to reopen its September 6 Decision or to grant any relief to LOA.

I. Evergreen did not Mislead the Board

LOA alleges that Evergreen planned to operate in Nevada but misled the Board regarding these plans in its Application so that the Board would not analyze how Evergreen's operations would affect the Nevada transportation market. According to LOA, the alleged misrepresentations warrant overturning the September 6 Decision as it applies to the acquisition of K-TCS's assets because various statutes and regulations prohibit submission of false or misleading information to the Board. As explained below, Evergreen did not mislead the Board and the fact that Evergreen has now definitively decided to conduct operations in Nevada does not warrant reopening the September 6 Decision.

The Application filed with the Board made clear at several points that the Applicants "intend to acquire" the assets of CUSA K-TCS, the Coach America carrier based in Las Vegas, NV, and to meld them into Evergreen. *See* Application at pages iii; 2 fn. 2; 3; 5 fn. 4. The Application also described K-TCS in the list of entities whose assets were being acquired, including its approximately 22 buses and intrastate operating permits. Application at 11. The Application further noted that K-TCS had terminated operations due to Coach America's financial problems and stated what was correct at the time and what is still true, namely that Evergreen "does not plan to resume operations previously offered by [K-TCS]." Application at 5 n. 4. At that time, Evergreen did not have definitive plans to conduct operations in Nevada. However, Evergreen obviously was still open to the possibility of conducting operations of some sort, even if not under K-TCS's name, at a future date in Nevada as indicated by Applicants' clear statements that they were seeking to acquire the assets of the carrier, including the Nevada intrastate operating authority held by K-TCS, which authority was specifically identified in the

Application. *See* Application at 16 & n. 8. Indeed, the Board’s September 6 Decision notes that the transaction approved by the Board included the transfer of intrastate operating authority from K-TCS to Evergreen. September 6 Decision at 5. If Evergreen had completely rejected the idea of operating in Nevada, Evergreen obviously would not have purchased the assets of K-TCS (as it did when the transaction was consummated) or sought prior Board approval for the control of those assets.

Following the filing of the Application, Evergreen identified certain business opportunities in Nevada and decided it would use the motorcoach assets and Nevada intrastate operating authority it now controlled pursuant to the Board’s decision, as well as federal interstate operating authority, to conduct operations there in its own name. Although the Application correctly stated that the Applicants did not intend to operate the K-TCS business (which had been discontinued prior to the Application being filed), nothing in the Application foreclosed the possibility that Applicants might decide to operate a motorcoach business in Nevada with the purchased assets. Here, Evergreen has decided (in lieu of re-starting the bankrupt K-TCS operation) to start a motorcoach operation in its own name in Nevada, using the certificates, motorcoaches and other assets it acquired from K-TCS and now controls with the permission of the Board.¹ Nothing in Evergreen’s Application or the Board’s September 6 Decision precludes this, and to the contrary the Application and the Decision both contemplate it.

¹ LOA points to Evergreen’s August 13, 2012 letter to the NTA as evidence that Evergreen’s current plans contradict its statement in the Application that it would not resume the operations of K-TCS. *See* Petition at 5. In that letter, Evergreen stated that it would operate using the certificates transferred from K-TCS, “whose services Evergreen [would] continue to operate post-closing.” This statement was simply meant to indicate to the NTA that Evergreen planned to use the certificates that would be transferred by the Board decision to operate the same general types of services previously offered by K-TCS. It did not mean that Evergreen would actually be restarting K-TCS’s business operations. Evergreen intends to begin new operations under its own name.

The fact that Applicants very clearly sought permission to acquire the K-TCS assets and operating authority underscores that the Application did not, as LOA is now claiming, contain any false or misleading information. The Application made clear that the assets Evergreen now intends to use were among those it wished to acquire. While LOA paints itself as the injured party, the fact is that it is Evergreen which relied on the Board's approval to close on the transaction in which it acquired the K-TCS assets, including intrastate certificates (for which it paid fair consideration). It is thus Evergreen that would be harmed were the Board to now hold that Evergreen cannot use the assets that it purchased, and which it now controls with the Board's permission, to initiate motorcoach operations in Nevada.

Moreover, if LOA were so concerned about the possible use of the Nevada certificates, it had the opportunity to participate in this proceeding when the proceeding was still being adjudicated by the Board, not months later. LOA had ample notice and opportunity to express its concerns by the date that comments were due on the Application, August 17, 2012. Its belated filing with the STB months after the comment deadline and after the decision, comes much too late in the process to justify any relief LOA now seeks. Indeed, even if one accepts for the sake of argument that LOA did not have adequate notice that Evergreen might operate in Nevada until some time in September 2012, LOA's delay in filing with the STB until November 30 (over two months after it complained to the NTA about Evergreens' plans to operate) its unexplained and inexcusable.² *Canadian Nat'l Ry., Grand Trunk Corp., & Grand Trunk W. R.R.—Control—Ill. Cent. Corp., Ill. Cent. R.R., Chicago, Cent. & Pac. R.R., and Cedar River R.R.*, STB Finance Docket No. 33556, 6 S.T.B. 344, 350 (served Aug. 27, 2002) (hereinafter "*Canadian Nat'l Ry.*")

² On September 26, 2012, LOA complained to the NTA that Evergreen should not be allowed to use K-TCS's operating authority because Evergreen misled the STB as to its intentions. LOA attached that NTA filing as Exhibit 1 to an October 17, 2012 letter that it submitted to the Board raising the issue that it now raises in its Petition, but LOA did not seek reopening at that time.

(“new evidence’ is not newly presented evidence, but rather is evidence that could not have been foreseen or planned for at the time of the original proceeding”); *Tongue River R.R. Co., Inc.—Construction and Operation—Western Alignment*, STB Finance Docket No. 30186 (Sub-No. 3), 2011 STB LEXIS 282, at *35 (served June 15, 2011) (“It is axiomatic that, for purposes of reopening, new evidence must in fact be new; it is not new if the ‘same substance’ could have been brought before us previously.”); *Friends of Sierra R., Inc. v. ICC*, 881 F.2d 663, 667-68 (9th Cir. 1989) (holding that a party could not seek reopening based on issues that could have been raised at the time of the original proceeding because notice of the proceeding had been provided in the Federal Register and “[p]ublication in the Federal Register is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance.”)

II. There Is no Basis for Reopening

The fact that Evergreen has definitively decided to conduct operations in Nevada is not “new evidence.” Implicit in Evergreen’s request to acquire the assets and operating authorities of K-TCS was the possibility that Evergreen may decide to operate in Nevada. Thus, LOA was on notice that Evergreen might enter the Nevada market despite the fact that it did not intend to step into the shoes of K-TCS. The fact that Evergreen is now attempting to begin operations in Nevada is therefore not “new evidence” in any material sense since it could have been foreseen at the time of the Application. *Canadian Nat’l Ry.*, 6 S.T.B. 344, 350 (“‘new evidence’ is not newly presented evidence, but rather is evidence that could not have been foreseen or planned for at the time of the original proceeding”).

Further, the Board has held that “[t]he alleged grounds [for reopening] must be sufficient to convince us that, if taken as facially true and correct, they might lead us to materially alter our decision in this case. If petitioner has presented no new evidence or changed circumstances that

‘would mandate a different result,’ then the Board will not reopen.” *Tongue River Railroad Co., Inc.—Construction and Operation—Western Alignment*, STB Docket No. 30186 (Sub-No. 3) (served June 15, 2011) (quoting *Montezuma Grain v. STB*, 339 F.3d 535, 542 (7th Cir. 2003)). In the present case, even if the Application had stated that Evergreen was certain to conduct operations in Nevada following Board approval, there is no reason to believe that the Board’s decision would have been different.

LOA suggests that Evergreen misled the Board regarding its intentions in Nevada so that the Board would not analyze how the proposed transaction would affect the “adequacy of transportation” in the Nevada market. However, had Evergreen set forth definitively its Nevada plans at the time of the Application, such a statement would only have strengthened Evergreen’s argument regarding the adequacy of transportation and made Board approval more likely. As the September 6 Decision makes clear, the Board did not (and is not required to) conduct a detailed analysis of individual transportation markets. The applicable statute, 49 U.S.C. § 14303(b)(1), requires as relevant that the Board determine the impact of a proposed transaction on “the adequacy of transportation to the public.” The Board met this requirement in the September 6 Decision by determining that the transaction would (1) result in control of the assets at issue by a more financially healthy carrier with lower operating costs that could improve service for the public relative to the Coach America companies and (2) not reduce competition. September 6 Decision at 4. Those findings apply with equal force to Nevada, where the K-TCS assets were located. Evergreen’s renewal of service for Nevada passengers in the face K-TCS’s cessation of service is obviously a plus for transportation service in the state. Allowing Evergreen to acquire and operate the assets of the bankrupt and non-operational K-TCS would allow those assets to be

operated by a more financially healthy company capable of providing high-quality service to the public.

Further, to state the obvious, Evergreen's operations in the market would not reduce competition. By contrast, LOA's efforts to seek reopening underscore that LOA is concerned with renewed or additional competition; it wants to limit entry into the motorcoach business to enhance the business of its motorcoach members and use the processes of this Board to reduce rather than enhance competition. The Board should not help LOA advance this fundamentally anti-competitive goal. Indeed, the Board's adequacy of transportation analysis under 49 U.S.C. § 14303(b) is focused in large part on ensuring that competition is not reduced. *See* September 6 Decision at 6 (“[T]he proposed transaction is consistent with the public interest under 49 U.S.C. § 14303(b), in that it should have a positive effect on the adequacy of transportation to the public—including no adverse impact on competition...”); *see also Northwestern Stage Lines, Inc. and Greyhound Lines, Inc.—Purchase (Portion Exemption)*, STB Finance Docket No. 33122, 1996 STB LEXIS 400, at **7-8 (served December 13, 1996) (holding that detailed scrutiny under section 14303 was not necessary in part because “proposed transaction should not result in a reduced level of service or a diminished level of competition.”).

Further, most of the transportation Evergreen intends to provide in Nevada will be charter transportation. Under 49 U.S.C. § 14501(a)(1)(C), states are prohibited from enforcing any “law, rule, regulation, standard, or other provision...relating to the authority to provide intrastate or interstate charter bus transportation.” This limitation on state authority ensures that the market for charter services remains as competitive as possible. It would be contrary to the purpose of this statute if the Board were to allow LOA to succeed in its strategy to reduce competitive options.

In short, had Evergreen’s plans for the Nevada market been more advanced at the time of the proceeding and had the Board considered those plans in addition to knowing (as it did) that Evergreen was seeking to control Nevada assets, the case for Board approval would have been even more compelling. This fact underscores the absurdity of LOA’s claim that Evergreen intentionally misled the Board to avoid Board scrutiny of its planned operations in Nevada. Because the “new evidence” offered as the basis for reopening would not have materially altered the Board’s decision, reopening is unwarranted.

III. The Board has Jurisdiction over this Matter

LOA argues that the Board’s jurisdiction over the asset acquisition transaction is limited to the assets K-TCS used in interstate transportation and that the Board therefore lacks jurisdiction over the transfer of authorities relating to purely intrastate operations. This interpretation is in clear conflict with 49 U.S.C. § 14303(f) and related federal case law and Board precedent, which firmly establish that the Board exercises plenary jurisdiction over the transfer of intrastate authorities when approving a transaction involving interstate carriers and that state regulation of the transfer is prohibited.³ The fact that only a portion of K-TCS’s

³ *Global Passenger Services, L.L.C.--Control--Bortner Bus Company, et al.*, Docket No. MC-F-20924, 1998 STB LEXIS 185, at *5 n.11 (served July 17, 1998) (“[I]f the participants to a finance transaction are motor carriers of passengers, subject to Board jurisdiction under 49 U.S.C. 13501, then under 49 U.S.C. 14303(f), they are subject to our exclusive and plenary jurisdiction in all matters relating to their consolidation, merger, and acquisition of control, and *this extends to intrastate operating rights.*”) (emphasis added); *Colorado Mountain Express, Inc. and Airport Shuttle Colorado, Inc., d/b/a Aspen Limousine Service, Inc.--Consolidation and Merger--Colorado Mountain Express*, STB Docket No. MC-F-20902, 2 S.T.B. 68; 1997 STB LEXIS 338 at *3 (STB served Feb. 28, 1997) (same); *Tennessee PSC v. Interstate Commerce Comm’n*, 891 F.2d 292 (6th Cir. 1989) (holding that pursuant to the predecessor of 14303(f), a carrier was not required to obtain Tennessee Public Service Commission approval for the transfer of an intrastate certificate to a new company resulting from a merger approved by the Interstate Commerce Commission); *Minnesota Transp. Regulation Bd. v. United States*, 966 F.2d 335, 337 (8th Cir. 1992) (“[T]he ICC’s exemption of this transaction allowed the firms to transfer the ‘grandfather’ authority without regard to its nontransferability under Minnesota law.”); *Leaseway Transp. Corp. v. Bushnell*, 888 F.2d 1212 (7th Cir. 1989) (holding that an Illinois

operations involved interstate transportation does not divest the Board of jurisdiction or permit co-extensive state jurisdiction. As the Board has stated, “Once interstate jurisdiction over the motor passenger carrier participants is established under 49 U.S.C. 13501, Federal law under 49 U.S.C. 14303(f) specifically preempts any state action that would interfere with the consummation of a Board approved or exempted merger, consolidation, or acquisition of control, *regardless of the extent of the participating carriers' operations in intrastate commerce.*”

Colorado Mountain Express, Inc. and Airport Shuttle Colorado, Inc., d/b/a Aspen Limousine Service, Inc.--Consolidation and Merger--Colorado Mountain Express, STB Docket No. MC-F-20902, 2 S.T.B. 68; 1997 STB LEXIS 338 at *6 (STB served Feb. 28, 1997) (emphasis added).

The Board had jurisdiction over the motor passenger carrier participants in this transaction under 49 U.S.C. 13501 since both Evergreen and the carriers whose assets it was acquiring, including K-TCS, held interstate operating authority and engaged in interstate operations, as Evergreen plans to do going forward.⁴ Indeed, the Board already determined that it had jurisdiction over this transaction. September 6 Decision at 3.

In support of its jurisdictional argument, LOA cites *North Alabama Express, Inc. v. ICC*, 62 F. 3d 361 (11th Cir. 1995),⁵ where applicants sought to transfer only operating authorities without merging and without one company acquiring substantially all of the assets of another

statute requiring approval of the Illinois Commerce Commission for the transfer of intrastate license was preempted by the predecessor or 14303(f)); *Oregon PUC v. Interstate Commerce Commission*, 979 F.2d 778 (9th Cir. 1992) (Oregon PUC’s attempt to exercise jurisdiction over the transfer of intrastate operating authority preempted by the predecessor of 14303(f)).

⁴ CUSA K-TCS held federal motor carrier operating authority in Docket No. MC-463271

⁵ LOA also cites *Funbus System, Inc. v. State of California Public Utilities Commission*, 801 F.2d 1120 (9th Cir. 1986). However, this case did not involve jurisdiction with respect to an asset acquisition transaction or merger. Rather, it dealt with whether an operator could conduct certain purely intrastate operations based solely on federal interstate operating authority. Thus, this case is inapposite.

company. In that case, applicants were allegedly engaged in a sham operating authority transaction that involved no change in interstate commerce in order to avoid state jurisdiction. The Interstate Commerce Commission and the Ninth Circuit Court of Appeals have stated that the test under *North Alabama* “is whether there has been a change in interstate commerce.” *M&R Trucking, Inc.—Purchase Exemption—Sunco Trucking Co.*, Docket No. 20285, 1994 MCC LEXIS 27 at *2-4 (served April 1, 1994) (citing *Oregon Pub. Util. Comm'n v. ICC*, 979 F.2d 778 (9th Cir. 1992)). In the present case, the transaction directly relates to and affects interstate commerce and is clearly not a sham transaction. Evergreen, which is an interstate carrier that operates in numerous states and across state boundaries, acquired not just operating authorities but substantially all of the assets of K-TCS, which was also an interstate carrier, along with the assets of numerous other interstate motor carriers. As a result of the transaction, K-TCS and the other motor carriers were left without any assets with which to conduct interstate operations and Evergreen will begin conducting new interstate and intrastate operations with the assets it acquired (e.g., interstate operations originating in Nevada using the assets acquired from K-TCS). In other words, this transaction resulted in the consolidation of the assets and operations of numerous interstate carriers. Thus, this transaction clearly caused a change in interstate commerce.

LOA attempts to bolster its jurisdictional argument by citing the federal transportation policy at 49 U.S.C. § 13101(a)(1)(E),⁶ which states that it is the policy of the federal government “to cooperate with each State and the officials of each State on transportation matters.” LOA suggests that, based on this statute, the Board should refer the matter to the NTA for

⁶ LOA actually cites 49 U.S.C. § 14301(a)(1)(E) but presumably they intended to cite section 13101 since section 14301 deals with security interests in certain motor vehicles.

adjudication. However, this argument ignores section 14303(f), which explicitly exempts parties from state regulation in cases such as this. If the Board referred the matter to the NTA, it would violate section 14303(f) by subjecting parties to state regulation. Further, the Ninth Circuit Court of Appeals directly addressed an argument almost identical to the one made by LOA here and rejected it. *See Oregon Pub. Util. Comm'n*, 979 F.2d at 781 (OPUC's fallback position is that the ICC failed significantly to show the comity required by the National Transportation Policy... It is not necessary in granting an exemption here that the ICC encourage the exercising of regulatory jurisdiction by, or cooperate with, a state.”).

LOA also alleges that the Nevada certificates have lapsed due to lack of use and suggest that under Nevada law, lapsed certificates cannot be transferred. Petition at 4, 9. However, the NTA issued an order allowing service under the certificates to be discontinued until October 12, 2012. *See* Exhibit 1. Therefore, when the Board approved the transfer of certificates to Evergreen in the September 6 Decision, there had been no unauthorized discontinuance of service and the transfer was permitted under Nevada law.⁷ *See* NAC § 706.389 (stating that

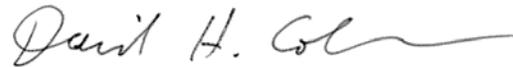
⁷ Evergreen did not resume service prior to October 12, 2012, when the NTA’s order approving discontinuance expired. However, this fact has nothing to do with whether the certificates were validly transferred to Evergreen on September 6, 2012 pursuant to the Board’s decision. Further, on September 26, 2012, LOA filed a protest with the NTA requesting that the NTA refuse to recognize the September 6 Decision as it applies to the transfer of Nevada certificates from K-TCS to Evergreen. The NTA has yet to rule on that protest and has not yet recognized the Board-approved transfer of certificates to Evergreen. Thus, LOA has delayed the NTA’s recognition of the transfer and now argues that the certificates cannot be transferred because they have lapsed. The Nevada law LOA cites indicates that certificates may be transferred where cessation of service has been approved by the NTA or is the result of circumstances outside of the operator’s control. *See* NAC § 706.389. In this case, the NTA approved the cessation of operations until October 12, 2012 but Evergreen could not conduct operations as an NTA-recognized holder of the certificates at that time because of LOA’s protest, which was outside of Evergreen’s control. Thus, under Nevada law, the certificates have not lapsed due to lack of service. In any event out of an abundance of caution, Evergreen has asked the NTA to extend the discontinuance order. Evergreen intends to ask the NTA to terminate that discontinuance when it initiates service, as it plans to do in January 2013.

when service has ceased, certificates may still be transferred if the NTA has approved the cessation). More importantly, Nevada law is irrelevant because it is preempted under 49 U.S.C. § 14303(f). Intrastate authorities are transferred as the result of a Board-approved transaction even if that transfer would be prohibited under state law. *See, e.g., Minnesota Transp. Regulation Bd. v. United States*, 966 F.2d 335, 337 (8th Cir. 1992) (“[T]he ICC's exemption of this transaction allowed the firms to transfer the ‘grandfather’ authority without regard to its nontransferability under Minnesota law.”).

IV. CONCLUSION

For the reasons explained above, the Board should refuse to reopen the September 6 Decision or grant any relief requested by LOA.

Respectfully submitted,



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LLC

December 18, 2012

EXHIBIT 1

BEFORE THE NEVADA TRANSPORTATION AUTHORITY

In Re: the post facto Request of CUSA K-TCS,)
 LLC to discontinue operations authorized under) Docket No. 12-04018
 Certificates of Public Convenience and Necessity)
 2016, Sub 2 and 2115 from April 12, 2012 through)
 October 12, 2012.)

At a general session of the Nevada Transportation Authority held on May 9, 2012.

PRESENT: Chairman Andrew J. MacKay
 Commissioner Michael J. Kloberdanz
 Commissioner Monica B Metz
 Deputy Commissioner Marilyn Skibinski

ORDER

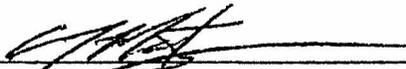
The Nevada Transportation Authority ("Authority") makes the following findings of fact and conclusions of law:

1. On April 20, 2012, Patrick V. Fagan, Esquire, filed a post facto Request on behalf of CUSA K-TCS, LLC ("Petitioner") designated as Docket Number 12-04018, with the Nevada Transportation Authority ("Authority") to temporarily discontinue operations of CoachAmerica and Gray Line Airport Shuttle authorized under Certificates of Public Convenience and Necessity ("CPCN") 2016, Sub 2 and 2115 respectively, for the period of April 12, 2012 through October 12, 2012. The Request was filed pursuant to Chapters 706 of the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC").
2. The Request on file herein comes within the purview of the statutes of the State of Nevada and within the regulatory jurisdiction of the Authority.
3. The Request was properly noticed to the public and no interventions or protests were filed.
4. The Authority has reviewed all the records relating to this Petition and finds that granting the Request would be in the public interest.

Therefore, based upon the foregoing findings, it is hereby ORDERED that:

1. The request of CUSA K-TCS d/b/a CoachAmerica and Gray Line Airport Shuttle to temporarily discontinue operations authorized under CPCN 2016, Sub 2 and 2115, respectively, is hereby GRANTED for the period April 20, 2012 through October 12, 2012.
2. Petitioner shall advise the Authority of its intent to resume operations authorized under CPCN 2016, Sub 2 and 2115 and undergo an operational inspection by Authority Staff **PRIOR** to resuming said operations.
3. The Authority retains jurisdiction for the purpose of correcting any errors that may have occurred in the drafting or issuance of this Order.

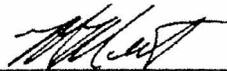
By the Authority,



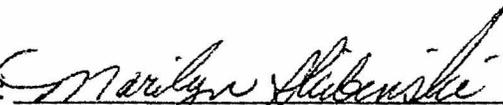
Andrew J. MacKay, Chairman



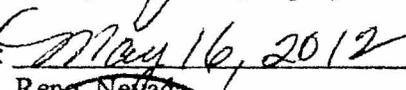
Michael J. Kloberdanz, Commissioner



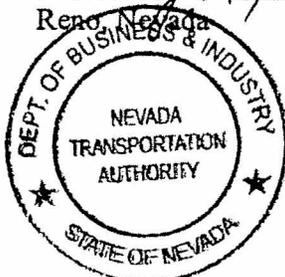
Monica B Metz Commissioner

Attest: 

Marilyn Skibinski, Deputy Commissioner

Dated: 

Reno, Nevada



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Petition to Reopen has been served this 18th day of December, 2012 via first-class mail, postage prepaid, upon all parties of record in Docket No. MC-F-21047.

A handwritten signature in cursive script, appearing to read "Chris Falcone", written in black ink.

Christopher G. Falcone