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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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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 BCCAE, LLC, CUSA CC, LLC, CUSA FL, LLC, CUSA  
GCBS, LLC, CUSA GCT, LLC, CUSA K-TCS, LLC, AND MIDNIGHT SUN  
TOURS, INC.**

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**APPLICANTS' REPLY IN SUPPORT OF APPLICATION AND  
REQUEST FOR AN EXPEDITED DECISION**

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Evergreen Trails, Inc. and Cabana  
Coaches, LLC

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**APPLICANTS’  
REQUEST FOR AN EXPEDITED DECISION**

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Applicants Frank Sherman; FSCS Corporation; TMS West Coast, Inc.; Evergreen Trails, Inc.; and Cabana Coaches, LLC (collectively, “Applicants”) filed an application with the Board on June 4, 2012 to assume control of the assets of the twelve Coach America carriers listed in the caption of this proceeding as required by 49 U.S.C. § 14303. On July 3, 2012, consistent with the statutory requirement at § 14303(d) for a 45-day comment period, the Board issued a decision soliciting public comments on that Application and setting August 17, 2012 as the due date for comments and September 4, 2012 as the due date for replies. The Board did not issue a tentative grant of the Application which would have become effective automatically had no adverse comments been filed by August 17, as per its usual practice specified at 49 C.F.R. §1182.5(a), because an adverse comment previously had been filed in response to the Application.

Specifically, on June 7, 2012 Mr. Michael Yusim, a bus driver formerly employed by a Coach America carrier whose assets Applicants seek to acquire (Midnight Sun Tours, Inc.), filed a comment complaining about a practice employed by Midnight Sun Tours, Inc. Applicants replied to that comment on June 11, 2012 and Mr. Yusim filed an unauthorized reply on June 12.<sup>1</sup>

No additional comments were filed by any other party as of the August 17 due date. Accordingly, this matter is now ripe for a decision. Applicants submit that on the basis of their Application, the Board should now proceed promptly to find that they have met the statutory requirements of 49 U.S.C. § 14303 to show that the control they seek is in the public interest. A prompt decision will allow them to consummate the acquisition of the motorcoach assets at issue from an operator currently in Chapter 11 bankruptcy and assume full control of those assets. This will improve the quality of service to the traveling public and ensure continued service.

Mr. Yusim's complaint offers no basis to delay a decision. He is apparently a complainant in a proceeding before the U.S. Department of Labor ("DOL") concerning alleged discrimination by his former employer, Midnight Sun Tours, Inc. ("Midnight Sun"). By his protest, Mr. Yusim asks the Board to disallow the sale of any Coach America carrier unless the Secretary of Labor is allowed to proceed to hear his case and a similar case. With respect to a similar protest filed by Mr. Yusim in another control proceeding involving the acquisition of the assets of other Coach America subsidiaries, the Board considered Mr. Yusim's claims and found them to be unpersuasive. *See*

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<sup>1</sup> Applicants filed with their June 4 application a request for interim control approval. Mr. Yusim also commented in opposition on that application, which the Board granted over his objection on June 29, 2012.

*Stagecoach Group plc and Coach USA, Inc., et. al—Acquisition of Control of Assets—American Coach Lines of Atlanta, Inc.; et al.*, Docket No. MC-F 21045, Slip. Op. at 7 (served Aug. 15, 2012). The Board should reach the same conclusion here.

This proceeding is distinguishable from the other proceeding in which Mr. Yusim filed a protest only by the fact that this proceeding involves the acquisition of the assets of Midnight Sun, his former employer. However, following the acquisition, the assets of Midnight Sun will be operated by Applicants under new ownership and under policies that will be set by those new owners. Further, pursuant to the bankruptcy proceedings, Applicants will acquire the assets free and clear of any liabilities, including any liabilities sought to be imposed on Applicants by Mr. Yusim through the DOL proceedings which he describes. In addition, as explained in Applicants' reply, the Bankruptcy Court has refused to lift the stay that might allow Mr. Yusim's claims to proceed at DOL, despite the fact that Mr. Yusim has actively pleaded his case before that court.

In light of the fact that there are no credible adverse comments, the Board should promptly find that the transaction at issue in this proceeding is in the public interest under section 14303(b). This will allow the Applicants to assume control of the motorcoach and

related assets at issue in order that they may operate their passenger transportation services as quickly as possible for the benefit of the travelling public.

Respectfully submitted,



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August 20, 2012

**CERTIFICATE OF SERVICE**

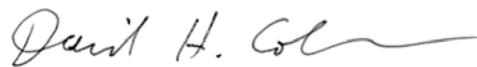
I certify that I have this 20th day of August, 2012 served a copy of the foregoing Applicants' Reply in Support of Application and Request for an Expedited Decision by first class mail or more expeditious means on:

Director of Operations  
Antitrust Division  
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