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233817

February 20, 2013

**VIA ELECTRONIC FILING**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

**ENTERED**  
**Office of Proceeding**  
**February 20, 2013**  
**Part of Public**  
**Record**

**Re: MC-F-21047, Frank Sherman, FSCS Corporation, TMS West Coast, Inc., Evergreen Trails, Inc. and Cabana Coaches, LLC – Acquisition and Consolidation of Assets – American 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.**

Dear Ms. Brown:

On February 19, 2013, Evergreen Trails, Inc. (“Evergreen”) and Cabana Coaches, LLC, as well as related non-carrier applicants (collectively “Applicants”), filed a letter with the Board replying to a November 30, 2012, letter filed by the Livery Operators Association of Las Vegas (“LOA”) in this proceeding. In Evergreen’s February 19, 2013 letter, it indicated that it was attaching a February 12, 2013 Evergreen reply to a January 28, 2013 letter that LOA submitted to the Nevada Transportation Authority. Evergreen inadvertently failed to attach that February 12, 2013 reply to its February 19, 2013 letter. Evergreen is therefore providing the February 12, 2013 reply with this letter.

Ms. Cynthia T. Brown  
February 19, 2013  
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Respectfully submitted,

A handwritten signature in black ink that reads "David H. Coburn".

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Attorneys for Frank Sherman, FSCS  
Corporation, TMS West Coast, Inc.,  
Evergreen Trails, Inc. and Cabana Coaches,  
LLC

February 20, 2013

cc: All parties of record

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February 12, 2013

**VIA FACSIMILE AND FEDERAL EXPRESS**

Ms. Marilyn Skibinski  
Deputy Commissioner  
The Nevada Transportation Authority  
2290 South Jones Boulevard  
Suite 110  
Las Vegas, NV 89146

**Re: Evergreen Trails, Inc. d/b/a Horizon Coach Lines, Docket No. 12-09019**

Dear Deputy Commissioner Skibinski:

This letter filed on behalf of Evergreen Trails, Inc. dba Horizon Coach Lines ("Evergreen") responds to the January 28, 2013 letter of the Livery Operators of Las Vegas ("LOA") and clarifies the misstatements and omissions in LOA's letter. In a bid to reduce competitive options available to Nevada consumers of transportation, LOA is seeking to undo the approval under federal law of the transfer of CUSA K-TCS, LLC's ("K-TCS") assets, including its intrastate certificates, to Evergreen. The NTA should not credit LOA's baseless efforts.

Before directly responding to LOA's letter, some background is appropriate. On June 4, 2012, Evergreen Trails, Inc. (an experienced motor passenger carrier) and related applicants filed an application with the Surface Transportation Board ("STB") under 49 U.S.C. § 14303 and the STB's regulations at 49 C.F.R. Part 1182 to purchase the assets of 12 separate interstate motor passenger common carrier subsidiaries of non-carrier Coach America Holdings, Inc. (Coach America), including as relevant here the assets of Nevada-based interstate motor carrier K-TCS. Coach America and K-TCS were (and remain) in Chapter 11 bankruptcy proceedings. K-TCS held Certificates of Public Convenience and Necessity ("CPCNs") 2016.2 and 2115 issued by the Nevada Transportation Authority, but had ceased operations with the permission of the NTA. At the time Evergreen filed the Application with the STB, it did not plan to restore the operations of K-TCS and so stated in a footnote to its Application. Nonetheless, Evergreen was still open to the possibility of operating in Nevada in some capacity and therefore also informed the STB in its Application that it intended to acquire through the proposed transaction the assets of K-TCS, including motorcoaches, goodwill and the CPCNs.

Last summer, Evergreen decided that it would conduct certain operations in Nevada with the K-TCS assets that it was then planning to buy, pending STB approval. Accordingly, on August 13, 2012, Evergreen sent a letter to the NTA explaining that it anticipated that the CPCNs held by K-TCS would soon be transferred to Evergreen pursuant to a decision by the STB and that Evergreen planned to conduct operations in Nevada.

On September 6, 2012, the STB issued a decision approving the acquisition of assets by Evergreen, including its acquisition of CPCNs 2016.2 and 2115. *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) (“*STB Decision*”). LOA did not participate in the STB proceedings and raised no timely objection to the transfer of assets from one interstate carrier to another interstate carrier. Thereafter, on September 12, 2012 the transaction that was the subject of the STB proceeding was consummated and the K-TCS assets transferred to Evergreen.

On September 26, 2012, LOA filed a protest with the NTA requesting that the NTA refuse to recognize the STB decision as it pertained to the Nevada CPCNs. Evergreen has responded to that protest. As you know, the NTA has not yet issued a decision regarding LOA’s protest. However, the NTA staff has acknowledged that Evergreen is currently permitted to operate pursuant to the CPCNs it acquired from K-TCS as a result of the STB decision. Accordingly, with the concurrence of the staff, Evergreen filed with NTA a tariff for services to be provided pursuant to CPCN 2016.2 and submitted to an inspection of its vehicles and its records, including driver records, by NTA inspectors.<sup>1</sup> On January 22, 2013, Evergreen initiated charter operations in Nevada pursuant to CPCN 2016.2. Evergreen currently conducts both intrastate and interstate charter operations in Nevada.

LOA’s September 26, 2012 protest regarding the transfer of intrastate authority from K-TCS to Evergreen and all of LOA’s subsequent filings, including the January 28, 2013 letter, are based on LOA’s claim that Evergreen misrepresented its intentions regarding service in Nevada in its application to the STB. That is completely untrue. As explained in Evergreen’s response to LOA’s protest and in Evergreen’s response to LOA’s petition to reopen the STB proceedings, Evergreen did not misrepresent its intentions to the STB. Rather, Evergreen simply indicated that it did not intend to resume the operations of K-TCS, whose assets and operating authorities it sought STB approval to acquire. And it did not re-initiate K-TCS’s operations, but used the assets it acquired with STB approval to initiate its own operations in its own name.

The fact that Evergreen might conduct operations in Nevada in some form was clear from its request for the STB to approve Evergreen’s acquisition of the K-TCS CPCNs, whose sole purpose is to allow a carrier to provide intrastate operations in Nevada. Evergreen did not intend to seamlessly resume services identical to those provided by K-TCS serving the exact

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<sup>1</sup> A stamped copy of the tariff cover page showing that the tariff was accepted by the NTA on January 14, 2012 is attached as Exhibit 1.

same customers as K-TCS, and its STB Application made this clear. Rather, Evergreen requested STB authority to acquire the assets, including CPCNs, of K-TCS so that it would have the option to begin its own services in Nevada if it identified customers and services it believed would be profitable. Further, as explained previously to the NTA and the STB, Evergreen had no reason to “hide the ball” respecting its intentions regarding operations in Nevada. Under the relevant federal statute, the STB is interested in the impact of a transaction on the adequacy of transportation to the public and whether the proposed transaction will reduce competition. Here, Evergreen’s use of the K-TCS assets provides additional and competitive service to the public, facts which support STB approval.

LOA’s January 28, 2013 letter also seeks clarification from the NTA on several issues. Specifically, LOA asks (1) how can Evergreen operate when the CPCNs under which they are operating has lapsed; (2) why was there no public hearing to allow objections to Evergreen’s resumption of service; (3) why is LOA’s petition to reopen filed with the STB not sufficient grounds for the NTA to hold the proceedings regarding Evergreen in abeyance; (4) how can Evergreen’s tariff be approved without a public hearing; and (5) how can the NTA allow Evergreen to initiate operations without independent oversight and inspections by the NTA. Each of these questions is addressed in turn below.

As explained in Evergreen’s previous submissions to the NTA, the CPCNs have not lapsed. NTA granted K-TCS approval to cease operations for the period April 20, 2012 through October 12, 2012. Thus, at the time the CPCNs were transferred as a result of the STB decision, the transfer was permitted under Nevada law. *See* NAC § 706.389 (stating that operating rights may not be transferred if serviced ceased before the transfer *without the permission of the NTA*). Further, the CPCNs were transferred pursuant to federal law at 49 U.S.C. 14303.<sup>2</sup> Following the

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<sup>2</sup> In this setting, federal law is preemptive. *See* 49 U.S.C. 14303(f), which provides that 49 U.S.C. § 14303(f), which states that “A carrier or corporation participating in or resulting from a transaction approved by the Board under this section... may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction *without the approval of a State authority*” and that “[a] carrier, corporation, or person participating in the approved or exempted transaction is *exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.*” (emphasis added). *See also, 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.”); *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, 69; 1997 STB LEXIS 338 at \*3 (served Feb. 28, 1997) (same).

transfer of authorities, in an abundance of caution, on November 30, 2012, Evergreen filed a request to extend the NTA's order approving discontinuance of service under the CPCNs acquired from K-TCS. The NTA has not yet issued an order with respect to that request. However, with respect to 2016.2 and Evergreen's recently-initiated operations, Evergreen followed the NTA's procedures for resuming temporarily discontinued service by providing written notice to the NTA, providing proof of insurance, filing a tariff and submitting to an inspection. NTA accepted these filings.

LOA also questions why Evergreen was allowed to resume services without a hearing to revive the CPCNs and to hear objections to Evergreen's resumption of service. The answer to this question is that the STB has already approved transfer of the CPCNs under federal law. Further, Nevada law does not require a hearing for a carrier to resume service when such service has been discontinued with the permission of the NTA. LOA points to no such requirement and the NTA's own form for requesting permission to cease service indicates that resuming service merely requires written notice, proof of insurance, and a copy of tariffs where applicable. Evergreen met these requirements.

LOA asks why its petition filed with the STB does not warrant continued abeyance of the NTA proceedings. In this proceeding, the NTA's role is limited to the ministerial action of formally recognizing the transfer of authority that has already occurred pursuant to the STB decision.<sup>3</sup> The status quo is that Evergreen holds interstate and intrastate authority allowing it to operate in Nevada and that LOA has not shown in its STB or NTA filings that the status quo should be altered.

LOA suggests that a hearing was necessary before approving the tariff filed by Evergreen. However, LOA does not claim that Evergreen's rates are unreasonable. Rather, LOA's objects to the fact that Evergreen has been permitted to operate at all. Thus, a tariff hearing, which it appears would not have been required here in any event, would not have addressed or resolved LOA's allegations, which are unfounded.

Finally, LOA asks why Evergreen is being allowed to operate without any independent oversight from the NTA. However, the NTA has in fact subjected Evergreen to its independent safety oversight. The NTA has inspected Evergreen's vehicles and records, including its driver records. It has also required Evergreen to demonstrate that it has sufficient insurance and to file a tariff. At each stage of the process, Evergreen has met applicable safety standards, kept the NTA advised, and the NTA has signed off on Evergreen's operations.

For the reasons explained above, Evergreen's and the NTA's actions in conjunction with the initiation of Evergreen's service in Nevada were consistent with the law. LOA, by contrast, is purporting to act as a private attorney general in a poorly disguised bid to insulate its members

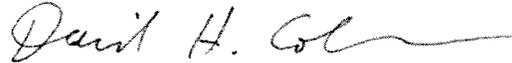
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<sup>3</sup> See STB regulations at 49 C.F.R. § 1182.8(f) ("If completion of a transaction requires the transfer of operating authorities or registrations from one or more parties to others, the parties shall comply . . . with *ministerial requirements of relevant State procedures.*") (emphasis added).

from lawful competition. The NTA should reject LOA's submissions and move forward to formalize the transfer of the K-TCS certificates to Evergreen.

If you have any questions, please do not hesitate to contact us.

Respectfully,



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David H. Coburn  
Christopher G. Falcone  
STEP TOE & JOHNSON LLP  
Attorneys for Evergreen Trails, Inc.

Original Title Page

N.T.A. No. 1  
CPCN 2016 Sub 2

No supplement to this tariff will be issued except for the purpose of canceling the tariff unless specifically authorized by the Authority.

Additions to, changes in and elimination from this tariff will be in loose leaf form.

Evergreen Trails, Inc.  
d/b/a Horizon Coach Lines  
CPCN 2016, Sub 2

CHARTER, SCENIC TOURS & SPECIAL SERVICES, TARIFF 1  
Naming  
CHARGES AND RATES AND RULES AND REGULATIONS  
For  
THE TRANSPORTATION OF PASSENGERS AND  
THEIR BAGGAGE  
In  
SCENIC TOURS & SPECIAL SERVICES  
Between,  
POINTS AND PLACES IN CLARK COUNTY, NEVADA & THE STATE OF NEVADA  
&  
CHARTER SERVICE  
Between  
POINTS AND PLACES IN THE STATE OF NEVADA

ISSUED: January 11, 2013

EFFECTIVE:

ISSUED BY:

Bobby Hill, General Manager  
5125 West Oquendo Road, Suite 8  
Las Vegas, Nevada 89118

**ACCEPTED**

**JAN 14 2013**

Nevada Transportation Authority  
Las Vegas, Nevada