

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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ENTERED

Office of Proceedings
June 15, 2015
Part of Public Record

STB Docket No. MC-F-21062

**Ace Express Coaches, LLC et al. – Acquisition of Certain Properties of
Evergreen Trails, Incorporated d/b/a Horizon Coach Lines**

**Reply of Evergreen Trails, Inc.
To Comments of Colorado Jitney, LLC**

Evergreen Trails, Inc. d/b/a Horizon Coach Lines (“Evergreen”), the seller of assets in this proceeding, hereby submits this reply to the June 8, 2015 Comments of Colorado Jitney, LLC (“Jitney”) submitted in this motor passenger carrier acquisition and control transaction. Evergreen urges the Board to expeditiously deny Jitney’s baseless request that the transaction at issue here be disapproved. Having already found that Jitney’s identical claims in another acquisition of assets proceeding involving Evergreen to be insufficient to forestall Board approval of that transaction, the Board should promptly make the same finding here. *See Academy Bus, LLC – Acquisition of the Properties of Evergreen Trails, Inc.*, STB Docket No. MC-F-21060 (served May 29, 2015) (finding that Jitney had not raised any claim that would warrant denial of a request for approval of an acquisition of Evergreen’s North Carolina assets by another motor passenger carrier).

Jitney claims that Evergreen previously engaged in unlawful activity by providing certain now-discontinued Denver-area intrastate motor carrier shuttle services to/from an outdoor entertainment venue without the approval of the Colorado Public Utilities Commission

(“CPUC”). As reported in its June 8 Comments, Jitney’s claims are pending before the CPUC in a complaint proceeding that it initiated there in 2014 against Evergreen and the City and County of Denver. See CPUC Docket 14F-0806CP. That CPUC proceeding, in which Jitney seeks the termination of a service that has already been discontinued, has nothing to do with the question raised before the Board in this proceeding.¹ What the Board is considering in this proceeding is whether the acquisition of Evergreen’s Colorado assets by Ace Express, et al. (“Buyers”) meets the criteria for approval under 49 U.S.C. 14303, i.e., whether the acquisition would advance the public interest considering factors such as the impact on service to the public, fixed charges or the interests of employees. On these questions, Jitney offers no reason for Board disapproval.

In fact, there is no question that the transaction will advance the public’s interest in continued motor carrier service. The Board has already made that finding in its April 22, 2015 decision tentatively approving the transaction at issue here. Moreover, the Board previously found in a decision issued on April 8, 2015 in related docket MCF 21062 TA that the Buyers are authorized to assume temporary control of Evergreen’s Colorado assets, which Buyers did shortly after issuance of that decision in order to avoid a likely cessation of services by Evergreen, which was faced with a large insurance payment required to continue to offer the services. Thus, the public has been enjoying continued service, which it might not have but for this transaction. That service consists of various interstate and intrastate contract and charter services described in the application filed by the Buyers in this proceeding; it does not consist of the now-discontinued local shuttle service about Jitney complains.

¹ The CPUC proceeding is currently pending on the City of Denver’s motion to dismiss on mootness grounds, given that Evergreen is no longer providing the service at issue. Evergreen is still a party to the CPUC case and, of course, will remain a legal entity notwithstanding the sale of its Colorado assets.

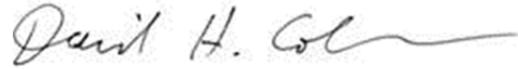
By contrast to the significant transportation services that Buyers will provide with the Evergreen assets to members of the public, as well as corporate and government entities, Jitney raises no more than a private concern about the legality of certain services that it apparently wanted to provide. If, as Jitney claims, Evergreen and other parties acted unlawfully in previously providing that service, Jitney remains free to pursue its claims at the CPUC, regardless of what Board does in this proceeding. On the other hand, the public would be threatened with an immediate loss of service if the transaction was not approved.²

Evergreen's owners are understandably interested in closing this transaction promptly and thereby receiving the consideration that Buyer's will pay for the assets being purchased upon regulatory approval. Jitney is no doubt aware of this, but is using the Board's processes to advance its own parochial interests. The Board should not allow that to happen and should

² Jitney has submitted to the Board, apparently as an exhibit to its comments, yet another complaint that it filed with the CPUC on May 28, 2015, against another motor passenger carrier, Colorado Tour Line, LLC. That carrier is unrelated to Evergreen or other parties to this proceeding. The new Jitney complaint appears to address the lawfulness of the same type of shuttle service that is raised in Jitney's pending CPUC complaint against Evergreen, et al. While Jitney has not explained why it has submitted this exhibit to the Board, it illustrates that Jitney remains perfectly capable of adjudicating its rights relative to the localized shuttle service about which it complains.

therefore act expeditiously to deny Jitney's request and provide final approval for the transaction at issue in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David H. Coburn", followed by a long horizontal flourish.

David H. Coburn
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June 15, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of June 2015 caused the foregoing Reply to be served on the other parties of record to this proceeding via U.S. mail, postage prepaid or more expeditious means.

A handwritten signature in cursive script that reads "David H. Coburn". The signature is written in black ink and is positioned above a horizontal line.

David H. Coburn