

BEFORE THE
SURFACE TRANSPORTATION BOARD

234363

STB DOCKET NO. MCF 21053

CONWAY'S BUS SERVICE, INC.
APPLICATION FOR AUTHORITY

MOTION TO DISMISS
VERIFIED APPLICATION FOR APPROVAL
OF CONWAY'S BUS SERVICE, INC.
ON THE BASIS OF LACK OF JURISDICTION

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Counsel For Conway's Bus Service, Inc .

Stephen M Brusini, Esq.
Orson and Brusini Ltd
144 Wayland Avenue
Providence, RI 02906

Dated: June 3, 2013

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SURFACE TRANSPORTATION BOARD**

DOCKET NO. MCS 21053

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**MOTION TO DISMISS
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Conway's Bus Service, Inc. ("CBS") hereby moves that the Surface Transportation Board (the "Board") dismiss the Verified Application for Authority (the "Application") concurrently filed in this matter by CBS pursuant to the requirements of 49 U.S.C. 14303 regarding its intended sale of certain assets of its Charter Division (as such term is defined in the Application) to ACADEMY EXPRESS, L.L.C. (the "Transaction") on the basis that the Board lacks jurisdiction to approve, deny, or otherwise restrict the Transaction.

STATEMENT OF FACTS

CBS incorporates by reference into this Motion to Dismiss the factual background set forth in the Application. By way of summary, both CBS (as seller) and ACADEMY EXPRESS, L.L.C. ("Academy") (as buyer) hold Certificates of Public Convenience and Necessity issued by the Federal Motor Carrier Safety Administration and are thereby authorized to carry passengers for hire in interstate commerce. CBS is made up of three distinct operating divisions. The Transaction concerns the sale of certain of the assets (primarily the customer list) of only one of CBS's operating divisions, namely its charter division, which handles transportation of passengers for hire in intrastate and interstate commerce (the "Charter Division").

The Transaction does not involve the transfer of CBS assets, facilities, or customers outside of the Charter Division and does not involve the transfer of CBS's certificate of operating authority issued by the FMSCA (noting that, as set forth above, Academy already possesses the same). At the closing of the Transaction, CBS will (i) voluntarily surrender its certificates of authority to operate as an interstate and intrastate motor carrier; (ii) sell its Charter Division assets to Academy; (iii) continue to operate its tour and travel service division (that provides multi-day packaging of hotel accommodations, meals, and transport by private tour groups); and (iv) liquidate the assets of its motor coach equipment division

ARGUMENT

49 U.S.C. § 14303 requires that motor carriers apply for and obtain approval from the Board when seeking to "consolidate, merge, purchase, lease, or contract to operate the properties or franchises of motor carriers of passengers or to acquire control of motor carriers of passengers." The sale of CBS' Charter Division may not require prior authorization from the Board under 49 U.S.C. 14303 because: (1) pursuant to 49 U.S.C. 14303(g), the Transaction may fall outside of the Board's jurisdiction; and (2) the impact of the Transaction on the motor carrier industry is minimal and does not involve the sale of an entire company

I. BOARD'S JURISDICTION

Pursuant to 49 U.S.C. § 14303(g), it is unclear as to whether or not Board approval is required since this Transaction involves the sale of certain assets of CBS' Charter Division only, noting that the Charter Division had less than \$2,000,000 in gross operating revenues for the twelve months preceding the Transaction, but that the aggregate gross operating revenues for the preceding twelve months of both the Charter Division and Academy, combined, exceeded \$2,000,000. If the fact that CBS's Charter Division had less than \$2,000,000 in gross operating

revenues for the twelve months preceding the Transaction satisfies the requirement of 49 U.S.C. § 14303(g), then the Transaction does not require the Board's approval.

II. LIMITED IMPACT ON MOTOR CARRIER INDUSTRY

Pursuant to 49 U.S.C. §14303(b), the Board is required to approve a sale like the Transaction if it finds that it is consistent with the public interest (weighing such factors as the effect of the proposed transaction on the adequacy of transportation to the public, the total fixed charges that result from the proposed transaction, and the interest of carrier employees affected by the proposed transaction). The intent of the statute is thereby to protect consumers from motor carrier transactions the scope of which would be likely to impact the public. The Transaction, however, is so small in scope as to be very unlikely to have any significant or meaningful impact on consumers, the motor carrier industry, or the public.

CONCLUSION

For the foregoing reasons, CBS respectfully requests that the Board dismiss the Application on the basis that the Board lacks jurisdiction to approve, deny, or otherwise restrict the Transaction.

Respectfully Submitted,
Conway's Bus Service, Inc.
By its Attorney,

Stephen M. Brusini, Esq
Orson and Brusini Ltd.
144 Wayland Avenue
Providence, RI 02906
Tel: (401) 223-2100
Fax (401) 861-3103

Dated: June 3, 2013

VERIFICATION

I, Peter D Conway, Vice President of Conway's Bus Service, Inc., declare under penalty of perjury under the laws of the United States of America that I have read the foregoing Motion to Dismiss and that its assertions are true and correct to the best of my knowledge, information, and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Conway's Bus Service, Inc. I know that willful misstatements or omissions of material fact constitute Federal criminal violations punishable under 18 U S C 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense

Dated at Providence, Rhode Island, this 31st day of May, 2013.

WITNESS.

Conway's Bus Service, Inc , Seller

Katie F. Monahan
Name

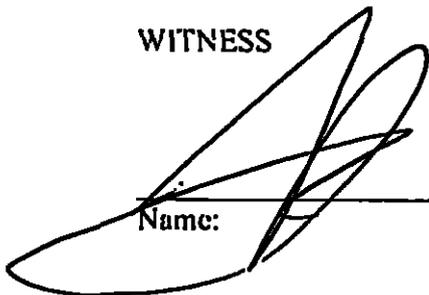
By Peter D. Conway
Peter D. Conway, Vice President

VERIFICATION

I, Francis Tedesco, Manager of ACADEMY EXPRESS, L L C.. declare under penalty of perjury under the laws of the United States of America that I have read the foregoing Motion to Dismiss and that its assertions are true and correct to the best of my knowledge, information, and belief. I further declare that I am qualified and authorized to submit this verification on behalf of ACADEMY EXPRESS, L.L.C. I know that willful misstatements or omissions of material fact constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense

Dated at Hoboken, New Jersey, this 31st, day of May, 2013.

WITNESS


Name: _____

ACADEMY EXPRESS, L L C.. Buyer


By: _____
Francis Tedesco, Manager

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2013, I caused a true copy of the within to be served via First-Class Mail, postage prepaid, to the following

Ms. Cynthia T Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street SW
Washington, DC 20423

United States Department of Transportation
Attn. Chief, Licensing and Insurance Division
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Chairman Elia Germani
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Federal Motor Carrier Safety Administration
Attn: Chief, Licensing and Insurance Division
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Katlin R. Newman