

October 17, 2012

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**Via Certified Mail and Electronic Filing**

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

ENTERED  
Office of Proceedings  
October 17, 2012  
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 BCCAE, LLC, CUSA CC, LLC, CUSA FL, LLC, CUSA GCBS, LLC, CUSA GCT, LLC, CUSA K-TCS, LLC, and Midnight Sun Tours, Inc. (with regard to the Nevada assets and operations, hereinafter “CUSA”).**

Dear Ms. Brown:

Our firm represents the Livery Operators Association of Las Vegas (“LOA”). In late September, upon receipt of the Surface Transportation Board’s decision, the LOA filed a Protest Brief before the Nevada Transportation Authority (“NTA”) in response to **Evergreen Trails, Inc. et al.** (“Evergreen”) request to the NTA for approval to revive CUSA’s lapsed Nevada Certificates Of Public Convenience and Necessity (the “Nevada CPCNs”) and resume intrastate operations. A true and correct copy of the LOA’s Protest Brief is attached hereto as Exhibit “1.”

The LOA’s intervention before the NTA, with regard to the lapsed Nevada CPCNs, presents a unique and extraordinary set of circumstances: Specifically, that Evergreen grossly misrepresented its intention to operate in Nevada to the Surface Transportation Board (“STB”) and is now claiming powers before the NTA, which were not duly authorized and could not have been duly authorized by the STB.

As more fully discussed in the LOA’s Protest Brief and Reply Brief, copies of which, without exhibits, are attached hereto as Exhibits “2,” as a result of Evergreen’s improper misrepresentations to the STB and the NTA, various infirmities followed. These are briefly summarized below:

- Given Evergreen’s false representation to the STB that it will not resume CUSA’s Nevada operations, the LOA and the public were not properly noticed;

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- The lapsed Nevada CPCNs are now subject to revocation before the NTA for failure to resume operations within 180 days of discontinuing services;
- The Nevada transportation market has changed;
- A material fact not considered in issuing a decision cannot be deemed decided;
- A material fact not considered in issuing a decision invalidates that decision;
- Pursuant to 49 U.S.C. §§ 13101, 13504 and Funbus System, Inc. v. State of California Public Utilities Commission, 801 F.2d 1120 (9th Cir. 1986), the STB's jurisdiction is limited with respect to purely intrastate routes in Nevada. A true and correct copy of the lapsed Nevada CPCNs are attached hereto as Exhibit "3."

Nevada is a highly regulated state with respect to commercial motor transportation as is the transportation market in Clark County, Nevada (Las Vegas). Accordingly, the NTA has been entrusted by the Nevada Legislature to regulate intrastate motor carriers in Nevada. The purpose of these regulations *inter alia* is to ensure public safety, as well as to ensure adequate, economical, and efficient service of the traveling public and to foster sound economic conditions in motor transportation. See NRS 706.151. Most importantly, the NTA has the unique local expertise to appropriately execute its solemn responsibility with regard to such "guiding charter." Accordingly, we would respectfully request that, pursuant to 49 U.S.C. § 13101(a)(1)(E), the STB defer to the NTA with regard to the issue of the lapsed Nevada CPCNs and/or whether a non-certificated (licensed) operator may perform strictly intrastate, per capita transportation services in Clark County.

Recently, the LOA is further evaluating, and hereby respectfully reserves, its rights to file a Leave to Intervene pursuant to 49 C.F.R. § 1112.4 before the STB, along with a Petition for Reconsideration/Petition to Reopen in the above-referenced proceedings.

Thank you for your consideration of the LOA's position. Should the STB require additional information and/or documentation or wish for the LOA to proceed with filing a Petition as discussed herein, please do not hesitate to notify our office.

Respectfully submitted,



Kimberly Maxson-Rushton, Esq.

Louis V. Csoka, Esq.

Cooper Levenson, Attorneys at Law

Counsel for the LOA

**EXHIBIT 1**

**EXHIBIT 1**

BEFORE THE NEVADA TRANSPORTATION AUTHORITY

In re Petition of Evergreen Trails, Inc. for Adoption of Transfer of Certificates of Public Convenience and Necessity to Provide Charter Bus Service, CPCN 2016.2 and CPCN 2115 ) Docket No. 12-09019

LIVERY OPERATORS ASSOCIATION OF LAS VEGAS  
PROTEST TO EVERGREEN TRAILS, INC. APPLICATION/PETITION  
FOR ADOPTION OF TRANSFER OF CERTIFICATES OF  
PUBLIC CONVENIENCE AND NECESSITY 2016.2 AND 2115

COMES NOW, Livery Operators Association of Las Vegas ("LOA"), by and through their counsel, Kimberly Maxson Rushton, Esq. of the law firm of Cooper Levenson, Attorneys at Law, and submits the following Protest to Evergreen Trails, Inc. ("Evergreen" or the "Applicant") Application/Petition for adoption of transfer of Certificates of Public Convenience and Necessity to provide common motor carrier services pursuant to CPCN 2016.2 and CPCN 2115 (the "Adoption of Transfer of the Nevada CPCNs").

As will be set forth more fully below, this Protest is filed pursuant to Nevada Administrative Code ("NAC") 706.397, as an objection to the Nevada Transportation Authority's ("NTA") Adoption of Transfer of the Nevada CPCNs to Evergreen.

The legal basis for the objection is that:

- (1) in obtaining its instant approvals from the Surface Transportation Board ("STB"), Evergreen specifically represented to the STB that it will not resume the services authorized pursuant to CPCN 2016.2 and CPCN 2115, which was a specific basis for the STB's approval;
- (2) the recent notice of this matter through the NTA has resulted in a denial of the LOA's due process rights; and



1 (3) the LOA has significant doubts regarding the STB's jurisdiction, in so far as CPCN  
2 2016.2 and CPCN 2115 relate to a relatively small operator's solely *intrastate* operation.

3 Based on the foregoing significant concerns, the LOA respectfully requests that the NTA  
4 either deny or, at a minimum, delay its Adoption of Transfer of the Nevada CPCNs, until all  
5 interested parties, including the LOA, has had an appropriate opportunity to study these issues.

6 All notices, pleading documents and correspondence pertaining to this proceeding should  
7  
8 be directed to the following individual:

9 Kimberly Maxson-Rushton, Esq.  
10 Cooper Levenson, Attorneys at Law  
11 6060 Elton Avenue, Suite A  
12 Las Vegas, Nevada 89107  
13 krushton@cooperlevenson.com

14 **I.**  
15 **FACTS**

16 1. Effective September 6, 2012, the STB approved the transfer of assets applications  
17 of twelve (12) separate interstate motor passenger common carrier subsidiaries (the "Federal  
18 Application"). See STB Decision Docket No. MCF 21047 (Sept. 6, 2012).

19 2. Such approval for the transfer of assets under the Federal Application also  
20 included CUSA K-TCS, LLC d/b/a CoachAmerica ("CoachAmerica") and CUSA K-TCS, LLC  
21 d/b/a Gray Line Airport Shuttle ("Grey Line"). See id.

22 3. In Nevada, Coach America holds CPCN 2016.2; Grey Line holds CPCN 2115  
23 (collectively, the "Nevada CPCNs"). See NTA Order 2016.2 (Oct. 2, 2009); see also NTA  
24 Order 2115 (Nov. 14, 2006).

25 4. Under their Nevada CPCNs, CoachAmerica and Grey Line are solely restricted to  
26 Nevada *intrastate* operations. See id.  
27  
28

1           5.       The Nevada CPCNs are also subject to suspension and revocation for failure to  
2 follow Nevada Revised Statutes (“NRS”) 706 and NAC 706 and cannot be transferred without  
3 the NTA’s approval. See id.

4           6.       In its Federal Application, Evergreen stated that “[CoachAmerica and Grey Line]  
5 discontinued operations in April 2012. *The assets of these companies will be consolidated into*  
6 *Evergreen, but Evergreen does not plan to resume the services previously offered by these*  
7 *companies.* See STB Decision Docket No. MCF 21047 (Sept. 6, 2012) at Page 3, Note 4  
8 (emphasis added).  
9

10          7.       These representations and background facts served as a direct basis for the STB’s  
11 decision and Order. See id. at Pages 2,3, 6, and 7.  
12

13          8.       In sharp contrast to its Federal Application, in its present application letter to  
14 NTA, and Evergreen now states that Evergreen “*will operate using the same . . . [Nevada*  
15 *CPCNs] assigned to . . . [CoachAmerica and Grey Line], who services Evergreen will continue*  
16 *to operate post-closing.*” Application Letter from David H. Coburn, Esq. to James Day, Esq.,  
17 (August 13, 2012) (emphasis added).  
18

19          9.       Accordingly, Evergreen’s representations to the STB, which allowed it to gain its  
20 instant approval from the STB for the Federal Application, were entirely different than its  
21 present representations to the NTA in connection with its application for the NTA’s Adoption of  
22 Transfer of the Nevada CPCNs.  
23

24          10.       Presumably, Evergreen has done such contrasting representations to the STB  
25 versus the NTA for two reasons.

26          11.       First, in granting its approval, the STB undertakes an examination of the  
27 “adequacy of transportation to the public” in all the relevant markets, related to which its  
28 approval is granted. See STB Decision Docket No. MCF 21047 (Sept. 6, 2012).

1 12. By stating that Evergreen will not resume operations in Nevada, Evergreen  
2 apparently hoped to “fast track” its approval before the STB, by avoiding the examination of the  
3 unique conditions of the Nevada market.

4 13. As a result of Evergreen’s apparent misrepresentation to the STB, STB did not  
5 undertake an examination of the “adequacy of transportation to the public” in the current Nevada  
6 market. See id.

7  
8 14. Second, by failing to properly advise the STB of its Nevada plans, Evergreen  
9 apparently also hoped that industry participants would not have to be properly noticed.

10 15. As a result of Evergreen’s apparent misrepresentation to the STB, industry  
11 participants, including LOA, were not properly noticed. See id.

12  
13 **II.**  
14 **ARGUMENT**

15 **A. The NTA should deny the proposed Adoption of Transfer of the Nevada CPCNs,**  
16 **based on Evergreen’s apparent false representations to the STB regarding its**  
17 **plans for Nevada.**

18 To be proper for all impacted markets, the STB approval must *inter alia* examine the  
19 “effect of the proposed transaction on the adequacy of transportation to the public.” 49 U.S.C. §  
20 14303(b)(1) (1996).

21 Here, in its Federal Application, Evergreen stated that “[CoachAmerica and Grey Line]  
22 discontinued operations in April 2012. *The assets of these companies will be consolidated into*  
23 *Evergreen, but Evergreen does not plan to resume the services previously offered by these*  
24 *companies.* See STB Decision Docket No. MCF 21047 (Sept. 6, 2012) at Page 3, Note 4  
25 (emphasis added).  
26

27 As a result of Evergreen’s apparent misrepresentation to the STB, STB did not undertake  
28 an examination of the “adequacy of transportation to the public” in the current Nevada market.

1 See STB Decision Docket No. MCF 21047 (Sept. 6, 2012). If Evergreen was forthcoming with  
2 the STB, the impact on the Nevada market would have been a key factor in the approval and  
3 would have likely delayed the application. Instead, Evergreen apparently chose to "fast track" its  
4 application, by misrepresenting such key specifics in its application to the STB.

5 Accordingly, Evergreen's STB approval is based on such apparent misrepresentation and  
6 cannot be applied to the Nevada market. Therefore, the NTA should deny Evergreen's proposed  
7 Adoption of Transfer of the Nevada CPCNs.

8  
9 **B. Evergreen's apparent false representations and recent notice of this matter  
10 through the NTA also resulted in a denial of the LOA's due process rights.**

11 In all proceedings, procedural due process requires meaningful "notice" and proper  
12 "opportunity to be heard." Maiola v. State, 120 Nev. 671, 675, 99 P.3d 227, 229 (2004); see also  
13 Community Ass'n for Restoration of the Environment v. Henry Bosma Dairy, 305 F.3d 943, 952  
14 (9th Cir. 2002).

15  
16 Here, by failing to properly advise the STB of its Nevada plans (indeed, in an apparent  
17 misrepresentation of such plans), Evergreen apparently also hoped that industry participants  
18 would not have to be properly noticed as to such plans. As a result of Evergreen's apparent  
19 misrepresentation to the STB, industry participants, including LOA, were not properly noticed.

20  
21 Indeed, the first time that the LOA heard of this matter was just days before the presently  
22 planned hearing before the NTA.

23 Accordingly, given Evergreen's apparent misrepresentation and the short notice time  
24 created as a result, there was no proper notice and no opportunity to be heard whatsoever that a  
25 brand new entity from the other side of the country will now set up operations in Nevada.  
26 Especially, since such operator previously represented to the STB that it had no such plans for  
27 Nevada.  
28

1 Therefore, the NTA should deny the Evergreen's proposed Adoption of Transfer of the  
2 Nevada CPCNs.

3 **C. Given the size of CoachAmerica and GreyLine and their Nevada CPCNs being**  
4 **limited solely to intrastate operations, LOA also does not believe that STB would**  
5 **have had jurisdiction with regard to entering an order for their Nevada CPCNs.**

6 Significant questions regarding the STB's jurisdiction as to the STB's ability to  
7 specifically order the transfer of Nevada CPCNs of CoachAmerica and Gray Line abound.

8 First, 49 U.S.C. § 14303(g) provides that "[STB's jurisdiction does] not apply to  
9 transactions involving carriers whose aggregate gross operating revenues were not more than  
10 \$2,000,000 during a period of 12 consecutive months ending not more than 6 months before the  
11 date of the agreement of the parties." Id.

12 Here, CoachAmerica and Grey Line were solely restricted to Nevada intrastate operations  
13 with relatively small operations. As such, the propriety of STB's jurisdiction as to these entities  
14 should be examined.

15 Second, federal jurisdiction does not normally extend to purely intrastate matters. See  
16 e.g., Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers,  
17 et al., 531 U.S. 159 (2001).

18 Here, under their Nevada CPCNs, CoachAmerica and Grey Line are solely restricted to  
19 Nevada intrastate operations, which were conducted intrastate. The Nevada CPCNs are also  
20 subject to suspension and revocation for failure to follow Nevada Revised Statutes ("NRS") 706  
21 and NAC 706 and cannot be transferred without the NTA's approval. In its Federal Application,  
22 Evergreen stated that "Evergreen does not plan to resume the services previously offered by . . .  
23 [CoachAmerica and Grey Line in Nevada]."

24 In short, while the Nevada CPCNs were approved for intrastate operations, Evergreen  
25 represented that it would not participate to in Nevada operations if approved by the STB.  
26  
27  
28

1 For these reasons, the propriety of STB's jurisdiction as to these entities' and their  
2 Nevada CPCNs should also be examined, especially, since it was not even the basis for  
3 consideration in the STB decision.

4 Given this factual and legal framework, the NTA should deny the Evergreen's proposed  
5 Adoption of Transfer of the Nevada CPCNs at this juncture.

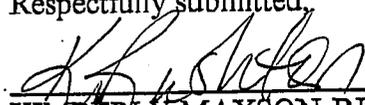
6  
7 **III.**

8 **CONCLUSION**

9 For the foregoing reasons, the Adoption of Transfer of the Nevada CPCNs should be  
10 denied by the NTA or, at a minimum, delayed, until all of these issues can be examined by all  
11 interested parties, including the LOA.

12 DATED this 26 day of September, 2012.

13  
14 Respectfully submitted,

15   
16 KIMBERLY MAXSON-RUSHTON, ESQ.  
17 Nevada Bar No. 5065  
18 LOUIS V. CSOKA, ESQ.  
19 Nevada Bar No. 7667  
20 COOPER LEVENSON  
21 ATTORNEYS AT LAW  
22 6060 Elton Avenue, Suite A  
23 Las Vegas, Nevada 89107  
24 Counsel for the Petitioner,  
25 LIVERY OPERATORS ASSOCIATION  
26 OF LAS VEGAS  
27  
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 26<sup>th</sup> 2012, I served a copy of the above and foregoing LIVERY OPERATORS ASSOCIATION OF LAS VEGAS PROTEST TO EVERGREEN TRAILS, INC. APPLICATION/PETITION FOR ADOPTION OF TRANSFER OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE CHARTER BUS SERVICE, CPCN 2016.2 AND CPCN 2115 via U.S. Mail, postage prepaid, upon the following:

David W. Newton, Esq.  
Senior Deputy Attorney General  
Office of the Attorney General  
555 East Washington Avenue, Suite 390  
Las Vegas, Nevada 89101

Nevada Transportation Authority  
Applications Manager  
2290 South Jones Boulevard, Suite 110  
Las Vegas, Nevada 89146

David Coburn, Esq.  
Steptow & Johnson, LLP  
1330 Connecticut Ave, NW  
Washington, D.C. 20036

  
An employee of  
Cooper Levenson, Attorneys at Law

# EXHIBIT 2

# EXHIBIT 2

**RECEIVED**  
OCT 16 2012  
Nevada Transportation Authority  
Las Vegas, Nevada

**BEFORE THE NEVADA TRANSPORTATION AUTHORITY**

In re Petition of Evergreen Trails, Inc. for Adoption of Transfer )  
of Certificates of Public Convenience and Necessity to Provide ) Docket No. 12-09019  
Charter Bus Service, CPCN 2016.2 and CPCN 2115 )

**LIVERY OPERATORS ASSOCIATION OF LAS VEGAS**  
**REPLY TO EVERGREEN TRAILS, INC.'S RESPONSE TO**  
**PROTEST TO EVERGREEN TRAILS, INC. APPLICATION/PETITION**

COMES NOW, Livery Operators Association of Las Vegas (“LOA”), by and through their counsel, Kimberly Maxson Rushton, Esq. and Louis V. Csoka, Esq. of the law firm of Cooper Levenson, Attorneys at Law, and submits the following Reply to Evergreen Trails, Inc. (“Evergreen” or the “Applicant”) Opposition to the LOA’s Protest to Evergreen’s Application/Petition for adoption of transfer of Certificates of Public Convenience and Necessity to provide Charter Bus Service, CPCN 2016.2 and intrastate Scenic Tour, Airport Transfer and Special Services, CPCN 2115 (the “Adoption of Transfer of the Nevada CPCNs”).<sup>1</sup>

**I.**  
**ARGUMENT**

**A. CUSA/Evergreen’s failure to timely resume operations is a ground for revocation of their Nevada CPCNs**

In general, the NTA regulations provide that “an application for the transfer of operating rights will not be approved if there has been a cessation of operations by the transferor without the prior approval of the . . . [NTA] even if the application . . . [for the same] was submitted before the operations ceased.” NAC 706.389(1) (2002).

<sup>1</sup> Unless otherwise noted, the remainder of this Reply brief will continue to utilize the same defined terms as the initial Protest submitted by the LOA.

1 More importantly, for Nevada CPCNs to be valid, the proposed service “[shall] be  
2 provided *on a continuous basis*.” NRS 706.391(2)(e) (2009) (emphasis added).

3 Here, Coach America and Gray Line Airport Shuttle (collectively, “CUSA”)  
4 precipitously ceased their operations over six months ago. Since that time, the lapsed Nevada  
5 CPCNs have not been revived nor continued.

6 Accordingly, CUSA did not have “active licenses” at the time the STB authorized  
7 Evergreen to acquire CUSA’s transportation assets. Instead, the licenses of Evergreen’s  
8 predecessor in interest, CUSA, have already lapsed and are, therefore, subject to revocation.  
9

10 Even if one accepts *arguendo* that the STB authorized Evergreen to acquire the Nevada  
11 CPCNs (notwithstanding Evergreen’s contrary representations to the STB, as fully discussed in  
12 the LOA’s Protest to the NTA and revisited herein), Evergreen has only been authorized to  
13 acquire such “lapsed” Nevada CPCNs that are now “subject to revocation.”  
14

15 **B. Evergreen’s Opposition fails to present any compelling arguments for the NTA**  
16 **proposed approval for the transfer of the Nevada CPCNS**

17 **1. Notwithstanding Evergreen’s argument to the contrary, Evergreen’s**  
18 **Application today is for a substantially different “transportation market”**

19 Contrary to Evergreen’s arguments, Evergreen’s application to the STB (the “Federal  
20 Application”) and corresponding request to the NTA do not present the restoration of the same  
21 level of competition in the Las Vegas market. Instead, Evergreen is attempted to enter into a  
22 different transportation market than the one that existed at the time CUSA stopped operating in  
23 Nevada.  
24

25 In particular, CUSA ceased its Nevada operations more than six months ago. When  
26 CUSA did so, existing Nevada operators had to fill the vacuum—by hiring additional staff and  
27  
28

1 by committing additional resources to those transportation services that CUSA had completely  
2 abandoned.

3 For example, one major transportation provider even agreed to honor the vouchers of the  
4 then-bankrupt CUSA, even though it never received compensation from CUSA or from any  
5 other person or entity on such vouchers. As such, the exit of CUSA from the Nevada market  
6 created significant costs to be borne by other carriers.  
7

8 Furthermore, since that time, the NTA has had multiple meetings where new  
9 transportation operations were approved for the Nevada market, and new CPCNs were granted;  
10 in part, Staff and the Commission have relied upon a review of the intrastate transportation  
11 market in determining the impact on other carriers and whether said services will foster sound  
12 economic conditions in the transportation industry. NRS706.151 and 706.391. As part of this  
13 analysis the NTA has considered the full exit of CUSA from the Nevada market. Each of these  
14 new investments and operations irrevocably changed the Las Vegas transportation market.  
15 Among other key facts, a greater number of motor carriers now operate in the Las Vegas market  
16 today than when CUSA ceased its operations.  
17  
18

19 As such, Evergreen's instant application and request do not restore the same level of  
20 competition in the Las Vegas market, as alleged by Evergreen. Instead, it disrupts, yet again, the  
21 transportation market with regard to those businesses that already experienced such disruption  
22 once, in having to adjust their functions, investments, and labor expenditures, upon the  
23 unequivocal abandonment of the Las Vegas market by CUSA. There is also further disruption  
24 with regard to those additional businesses that were since approved with the expectation that  
25 CUSA was not returning to service (not without a full analysis by the NTA of the viability of  
26 the services).  
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1 Accordingly, Evergreen's argument that it is merely seeking to restore the same level of  
2 competition in the Las Vegas market is completely without any merit.

3 **2. Notwithstanding Evergreen's argument to the contrary, Evergreen's**  
4 **application to the STB was solely for the approval of its acquisition of CUSA's**  
5 **operating asset not for the approval of obtaining Nevada CPCNs**

6 Evergreen improperly conflates its approval from the STB for its acquisition of  
7 transportation assets of its bankrupt predecessor entity with those statutory and regulatory  
8 requirements that pertain to the actual proper receipt of a Nevada CPCN.

9 Evergreen appears to pretend that, by receiving STB approval to acquire transportation  
10 assets, it also holds approval to operate those assets. Such assertion by Evergreen, however, is  
11 belied by Evergreen's own representations to the STB that "it was not resuming its Nevada  
12 operations." STB Decision Docket No. MCF 21047 (Sept. 6, 2012) at Page 3, Note 4 (emphasis  
13 added).  
14

15 As such, the STB's approval could only be based upon the fact that Evergreen  
16 specifically represented that it was not resuming CUSA's Nevada operations in any manner  
17 whatsoever.  
18

19 In particular, the STB's action cannot amount to an approval to transfer the Nevada  
20 CPCNs, as Evergreen specifically excluded such facts from its own STB application by virtue  
21 of its representation that they would not be needed. As a factual matter, the transfer of CPCNs  
22 could not have been properly approved.  
23

24 Accordingly, Evergreen's request to revive and transfer the abandoned Nevada CPCNs  
25 of CUSA must be denied.

26 ///  
27 ///  
28 ///

1           **3. Notwithstanding Evergreen's argument to the contrary, the decision of the**  
2           **STB, where it did not even consider the Nevada CPCNs, cannot be dispositive**  
3           **as to the Nevada CPCNs**

4           Relevant information not included in the initial application requires a new proceeding.

5           See, e.g., Shon Ning Lee v. Immigration & Naturalization Service, 576 F.2d 1380 (9th Cir.  
6           1978).

7           In its application to the STB, Evergreen stated that "[CUSA] discontinued operations in  
8           April 2012. The assets of these companies will be consolidated into Evergreen, but Evergreen  
9           does not plan to resume the services previously offered by these companies." STB Decision  
10          Docket No. MCF 21047 (Sept. 6, 2012) at Page 3, Note 4 (emphasis added).

11          Given that Evergreen specifically represented to the STB that it will not resume  
12          operations in Nevada, the STB's decision cannot be determinative as to an issue that was not  
13          before it. Accordingly, the decision of the STB is not dispositive as to the Nevada CPCNs.  
14          Indeed, contrary to Evergreen's assertions, the STB's order is completely silent on the  
15          abandoned Nevada CPCNs.

16          Accordingly, Evergreen's request to revive and transfer the abandoned Nevada CPCNs  
17          of its predecessor entity in interest must be denied, as it will require a new application.

18           **4. Notwithstanding Evergreen's argument to the contrary with regard to last**  
19           **minute communications to the NTA, the decision of the STB, given Evergreen's**  
20           **failure to disclose its material plans in the Federal Application, cannot be**  
21           **dispositive as to the Nevada CPCNs**

22           In its Opposition brief filed before the NTA, Evergreen now concedes that it failed to  
23           inform the STB that it was planning to resume it's Nevada operations. See Opposition, Pages 1-  
24           2, a true and correct copy of which is attached as Exhibit "1" hereto. In doing so Evergreen  
25           misled the STB. And now, is attempted to use the STB approval to mislead the NTA into  
26           transferring intrastate operating authorities to a non-certificated carrier.  
27  
28

1 In making a proper application, secret plans have no place and do not matter. Instead, an  
2 applicant has a duty to disclose all relevant facts to the decision maker. Where there is a failure  
3 to disclose all relevant facts, the application is properly denied. See, e.g. In re Bitter, 2008 VT  
4 132 (Vt. 2008).

5 Here, Evergreen argues that a letter sent to the NTA (an agency not involved in its  
6 application before the STB) approximately two weeks before the STB issued its decision  
7 somehow cures Evergreen completely of misleading the STB with regard to the Federal  
8 Application. This cannot be the case. The decision maker was the STB, not the NTA. Thereby  
9 evidencing that the actual decision maker was intentionally misled.  
10

11 Furthermore, contrary to Evergreen's representations today, it was not, and could not be,  
12 "obvious," neither to the STB nor to any interested person that Evergreen would be resuming  
13 the routes in Nevada of its predecessor entity, especially, since Evergreen made the specific  
14 representation to the STB that it would not do so. See STB Decision Docket No. MCF 21047  
15 (Sept. 6, 2012) at Page 3, Note 4 (emphasis added).  
16

17 Indeed, Evergreen now admits that "[Only] following filing of the Application,  
18 Evergreen identified certain business opportunities in Nevada and . . . [decide to act upon the  
19 same]." Evergreen's Letter to the STB, at Page 3 (October 9, 2012), a true and correct copy of  
20 which is attached as Exhibit "2" hereto.  
21

22 Therefore, Evergreen by its own admission failed to properly notify the STB regarding  
23 the true intent of its Federal Application. Evergreen's own representations, therefore,  
24 foreclosed the possibility of resuming the Nevada operations. Nothing in the application  
25 Evergreen submitted to the STB indicated that they were indeed keeping their options open.  
26

27 ///  
28

1 Accordingly, Evergreen's request to revive and transfer the Abandoned Nevada CPCNs  
2 of its predecessor entity in interest must be denied.

3 **C. The STB lacked jurisdiction with regard to the Nevada CPCNs**

4 In relevant portion, 49 U.S.C. § 14303(a) provides that the STB can only grant approvals  
5 for consolidations, mergers, and acquisitions of motor carrier of passengers where it is "subject  
6 to . . . [the STB's] jurisdiction," as set forth in Chapter 135. See id. Chapter 135, in turn,  
7 provides that the STB's "jurisdiction" directly hinges on transportation activities related, in  
8 some substantial manner, to an *interstate operation*. See id at § 13501.

9  
10 For that reason, motor carrier transportation entirely in one state, for example, is not  
11 subject to the STB's jurisdiction. See id at § 13504. In those cases where the operations being  
12 considered for approval are mixed in nature (some activities being interstate and some  
13 intrastate), the STB's exercise of jurisdiction on the intrastate activities must be predicated on a  
14 "nexus between a carrier's intrastate and interstate operations." Funbus System, Inc. v. State of  
15 California Public Utilities Commission, 801 F.2d 1120 (9th Cir 1986) (construing the Bus Act,  
16 the predecessor federal statute, administered by the Interstate Commerce Commission, the  
17 predecessor entity to the STB); see also North Alabama Express, Inc. v. I.C.C., 62 F.3d 361,  
18 364 (11th Cir. 1995) (holding similarly; subsequently, reversed in part on different grounds).

19  
20  
21 Regardless of proper jurisdiction, Federal transportation policy associated with  
22 transportation approvals also requires the STB "to cooperate with each State and the officials of  
23 each State on transportation matters." 49 U.S.C. § 14301 (1995)(a)(1)(E).<sup>2</sup>

24  
25 Here, CUSA's previous intrastate routes and the associated Nevada CPCNs bear a  
26 limited nexus to interstate commerce – specifically, only the charter bus authority. Accordingly,  
27

28 <sup>2</sup> Evergreen offers up various cases on jurisdiction, however, most of these cases do not deal with the specific  
issues at hand or are otherwise distinguishable.

1 the STB's exercise of jurisdiction with regard to the lapsed intrastate Nevada CPCNs is not  
2 proper.

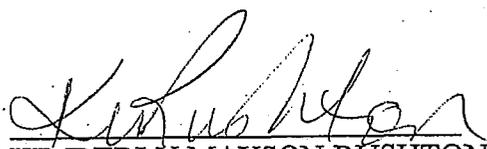
3 At a minimum, pursuant to its own enabling act, the STB should now refer this matter to  
4 the NTA for adjudication.

5  
6 **II.**  
7 **CONCLUSION**

8 For the foregoing reasons, the LOA asserts that the CPCNs at issue should be revoked  
9 for failure to resume operations. Should the Certificates not be revoked, the LOA respectfully  
10 requests that the Adoption of Transfer of the Nevada CPCNs be denied and Evergreen required  
11 to file an application for authority to operate as a common motor carrier of passengers in  
12 Nevada.

13  
14 DATED this 16 day of October, 2012.

15 Respectfully submitted,

16  
17   
18 KIMBERLY MAXSON-RUSHTON, ESQ.  
19 Nevada Bar No. 5065  
20 LOUIS V. CSOKA, ESQ.  
21 Nevada Bar No. 7667  
22 COOPER LEVENSON  
23 ATTORNEYS AT LAW  
24 6060 Elton Avenue, Suite A  
25 Las Vegas, Nevada 89107  
26 Counsel for the Petitioner,  
27 LIVERY OPERATORS ASSOCIATION  
28 OF LAS VEGAS

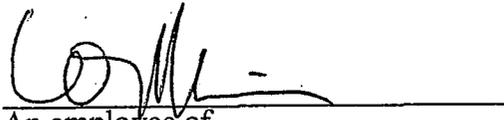
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 16, 2012, I served a copy of the above and foregoing LIVERY OPERATORS ASSOCIATION OF LAS VEGAS REPLY TO EVERGREEN TRAILS, INC.'S RESPONSE TO LIVERY OPERATORS ASSOCIATION OF LAS VEGAS PROTEST TO EVERGREEN TRAILS, INC. APPLICATION/PETITION via U.S. Mail, postage prepaid, upon the following:

David W. Newton, Esq.  
Senior Deputy Attorney General  
Office of the Attorney General  
555 East Washington Avenue, Suite 390  
Las Vegas, Nevada 89101

Nevada Transportation Authority  
Applications Manager  
2290 South Jones Boulevard, Suite 110  
Las Vegas, Nevada 89146

David Coburn, Esq.  
Steptow & Johnson, LLP  
1330 Connecticut Ave, NW  
Washington, D.C. 20036

  
An employee of  
Cooper Levenson, Attorneys at Law

**EXHIBIT 3**

**EXHIBIT 3**

TRANSPORTATION SERVICES AUTHORITY OF NEVADA

ORDER  
and  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

CUSA K-TCS, LLC  
dba Gray Line Airport Shuttle

CPCN 2115  
(Formerly cpc-a 699, Subs 2, 3 and 4)  
Docket No. 04-04031

The Transportation Services Authority of Nevada ("Authority") finds that the above-named carrier has complied with this Authority's Compliance Order dated January 26, 2006, the findings of fact and conclusions of law which are hereby incorporated by this reference, and therefore is entitled to receive authority from this Authority to engage in transportation in intrastate commerce as a motor carrier.

IT IS ORDERED that the Certificates of Public Convenience and Necessity identified as cpc-a 699, Sub 2, 3 and 4 are hereby vacated and CUSA K-TCS, LLC dba Gray Line Airport Shuttle is hereby granted this Certificate of Public Convenience and Necessity, identified as CPCN 2115, as evidence of the authority of the holder to engage in transportation in intrastate commerce as a common motor carrier subject to applicable statutes, rules and regulations of the Authority, and such terms, conditions and limitations as are now or may hereafter be attached to the exercise of the privileges herein granted.

IT IS FURTHER ORDERED and made a condition of this certificate that the holder shall render reasonably continuous and adequate service in pursuance of the authority herein granted, and that failure to do so shall constitute sufficient grounds for suspension, modification or revocation of this certificate.

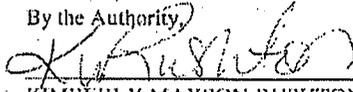
IT IS FURTHER ORDERED that nothing contained herein shall be construed to be either a franchise or irrevocable and that failure to comply with rules, regulations and orders of the Authority and applicable statutory provisions shall constitute sufficient grounds for suspension or revocation of this certificate.

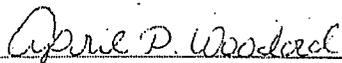
IT IS FURTHER ORDERED that this authority shall not be sold or transferred without the Authority's prior approval.

IT IS FURTHER ORDERED that the transportation service to be performed by said carrier shall be as specified below:

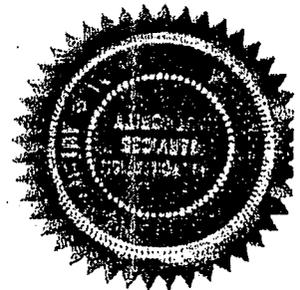
Provide airport transfer services to passengers and their luggage, on call over irregular routes, within Clark County, Nevada.

IT IS FURTHER ORDERED that the Authority retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order and Certificate of Public Convenience and Necessity.

By the Authority  
  
KIMBERLY MAXSON-RUSHTON, Chairman

Attest:   
April Woodard, Deputy Commissioner

Dated: 11-14-04  
Las Vegas, Nevada



NEVADA TRANSPORTATION AUTHORITY  
ORDER  
and  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

CUSA K-TCS, LLC  
dba CoachAmerica

CPCN 2016, Sub 2  
Docket No. 09-06023

The Nevada Transportation Authority ("Authority") finds that the above-named carrier has complied with this Authority's Compliance Order dated September 17, 2009 the findings of fact and conclusions of law which are hereby incorporated by this reference, and therefore is entitled to receive authority from this Authority to engage in transportation in intrastate commerce as a motor carrier.

IT IS ORDERED that the certificate of public convenience and necessity identified as CPCN 2016, Sub 1 is hereby cancelled and CUSA K-TCS, LLC dba CoachAmerica is hereby granted this certificate of public convenience and necessity identified as CPCN 2016, Sub 2 as evidence of the authority of the holder to engage in transportation in intrastate commerce as a common carrier by motor vehicle subject to applicable statutes, rules and regulations of the Authority, and such terms, conditions and limitations as are now or may hereafter be attached to the exercise of the privileges herein granted.

IT IS FURTHER ORDERED and made a condition of this certificate that the holder shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure to do so shall constitute sufficient grounds for suspension, modification or revocation of this certificate.

IT IS FURTHER ORDERED that nothing contained herein shall be construed to be either a franchise or irrevocable and that failure to comply with rules, regulations and orders of the Authority and applicable statutory provisions shall constitute sufficient grounds for suspension or revocation of this certificate.

IT IS FURTHER ORDERED that this authority shall not be sold or transferred without the Authority's prior approval.

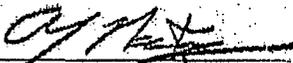
IT IS FURTHER ORDERED that the transportation service to be performed by said carrier shall be as specified below:

Provide scenic tour services and special services to passengers and their luggage, on call over irregular routes, between points and places in Clark County, Nevada on one hand and points and places within the State of Nevada on the other hand.

Provide intrastate charter bus service between points and places in the State of Nevada.

IT IS FURTHER ORDERED that the Authority retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order and Certificate of Public Convenience and Necessity.

By the Authority,

  
Andrew J. MacKay, Chairman

Attest:   
James Allen Day, Administrative Attorney

Dated: October 7, 2009  
Las Vegas, Nevada

