

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 12,932

IN THE MATTER OF:

Served August 2, 2011

Application of ACADEMY EXPRESS, )  
L.L.C., Trading as ACADEMY, WMATC ) Case No. AP-2011-079  
No. 456, to Purchase. Lease, or )  
Contract to Operate a Substantial )  
Part of the Property of NEW WORLD )  
TOURS, INC., WMATC No. 143 )

Applicant, Academy Express, L.L.C., trading as Academy, WMATC No. 456, (Academy Express) requests Commission approval to lease and then purchase the 25-vehicle fleet of New World Tours, Inc., WMATC No. 143 (New World). The application is unopposed.

This transaction is governed by Title II of the Compact, Article XII, Section 3(a)(iii), which provides: A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District.

The Commission may approve an application under Article XII, Section 3, if it finds that the proposed transaction is consistent with the public interest.<sup>1</sup> The public interest analysis focuses on the fitness of the acquiring party, the resulting competitive balance, and the interest of affected employees.<sup>2</sup>

While this application was pending, New World voluntarily terminated Certificate No. 143.<sup>3</sup> Academy Express then filed a motion for leave to withdraw the application based on the belief that because New World was no longer a "carrier that operates in the Metropolitan District," Article XII, Section 3, was no longer relevant. At the same time, Academy Express requests that the Commission accept a lease covering the New World fleet filed by Academy Express on June 29, 2011.

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<sup>1</sup> Compact, tit. II, art. XII, § 3(c).

<sup>2</sup> Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at DC CODE ANN. § 9-1103.04); *In re First Transit, Inc.*, No. AP-07-194, Order No. 11,729 (Dec. 4, 2008).

<sup>3</sup> *In re New World Tours, Inc.*, No. AP-11-087, Order No. 12,916 (July 18, 2011).

Commission precedent holds that "the relevant time for determining whether a carrier 'operates in the Metropolitan District' shall be determined as of the date the application in question is filed."<sup>4</sup> Inasmuch as the motion for leave to withdraw is not predicated on the parties' decision to abandon the transfer of New World's Fleet to Academy Express but rather on the mistaken belief that voluntary termination of Certificate No. 143 has rendered moot the need for Commission approval under Article XII, Section 3, and considering that we may not both grant the motion and accept the lease, the motion shall be denied.

The Commission finds Academy Express's acquisition of New World buses consistent with the public interest. First, an existing WMATC carrier is entitled to a presumption of fitness.<sup>5</sup> There is nothing in the record to rebut that presumption in this case.

Second, applicant states that it "intends to conduct operations in the WMATC area from the same facilities utilized by New World with substantially the same employees employed by New World."

Finally, the primary concern when assessing the effect on competition of a transaction under Article XII, Section 3, is whether the transaction will increase the acquiring party's market share.<sup>6</sup> Transactions which do not increase market share give little pause for concern, and the Commission will approve even those transactions which tend to increase market share as long as there is sufficient post-transaction competition to check any adverse effects that such transactions otherwise might produce.<sup>7</sup>

Both parties had tariffs on file with the Commission for charter bus service at the time the application was filed. The charter market in the Metropolitan District is served by over 130 WMATC carriers that collectively operate approximately 2450 vehicles. The transfer of 25 vehicles from New World to Academy Express, which has 256 WMATC vehicles, is unlikely to result in any significant increase in charter market concentration.<sup>8</sup>

THEREFORE, IT IS ORDERED:

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<sup>4</sup> *In re Upscale Limo. Serv. LLC*, No. AP-08-142, Order No. 11,644 (Oct. 24, 2008) (citing *In re VIP Coach Servs., Inc., & White House Sightseeing Corp.*, No. AP-84-06, Order No. 2550 at 4-5 (May 1, 1984)).

<sup>5</sup> *In re Crown Charters & Tours, LLC*, No. AP-05-205, Order No. 9471 (Apr. 13, 2006).

<sup>6</sup> Order Nos. 11,580; 9471.

<sup>7</sup> *Id.*

<sup>8</sup> See *First Transit, Inc.*, No. AP-07-194, Order No. 11,729 (Dec. 4, 2008) (citing federal Horizontal Merger Guidelines), available at <http://www.usdoj.gov/atr/public/guidelines/hmg.htm>.

1. That the motion of Academy Express for leave to withdraw is denied.

2. That the Commission finds that applicant's acquisition of New World's fleet is consistent with the public interest.

3. That applicant may not operate the New World buses under WMATC Certificate No. 456 unless and until applicant has complied with the terms of this order.

4. That applicant shall present all revenue vehicles acquired from New World for inspection by Commission staff and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) a list of the revenue vehicles acquired from New World stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each such vehicle; (b) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (c) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

5. That the approval granted herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director