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SERVICE DATE — JULY 19, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21116

ESSEX EQUITY PARTNERS MJT, LLC, LAWRENCE BOYCE, AND TERRY STAPP—
ACQUISITION OF CONTROL—XPLORE KY LLC AND MJT NASHVILLE LLC

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On June 20, 2024, Essex Equity Partners MJT, LLC (Essex MJT), Lawrence Boyce (Boyce), and Terry Stapp (Stapp) (collectively, Applicants), all noncarriers, filed an application for after-the-fact authority to acquire indirect control of two interstate passenger motor carriers, Xplore KY LLC (Xplore) and MJT Nashville LLC (Nashville) (collectively, Carriers). Pursuant to the completed transaction, Applicants acquired direct control of the outstanding equity membership in MJT Holdings, LLC (MJT Holdings), a noncarrier entity that holds all the outstanding membership interests in Carriers, from Sean Higgins and Lisa Higgins (collectively, Sellers). The Board is tentatively approving and granting after-the-fact authorization of the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments may be filed by September 3, 2024. If any comments are filed, Applicants may file a reply by September 17, 2024. If no opposing comments are filed by September 3, 2024, this notice shall be effective on September 4, 2024.

ADDRESSES: Comments may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to Applicants' representative: Kiefer A. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W. Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Brian O'Boyle at (202) 245-0364. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: According to the application, Essex MJT is a Kentucky limited liability company located in Kentucky,¹ Boyce is an individual resident of Kentucky, and Stapp is an individual resident of Indiana. (Appl. 2.) None of the Applicants are federally

¹ Further information about Essex MJT's corporate structure and ownership can be found in the application. (See Appl. 2-3 & Ex. A.)

regulated passenger motor carriers. (*Id.* at 3.) Other than Carriers, which Applicants acquired indirect control of when the transaction was completed on April 23, 2024,² none of the entities or persons having direct or indirect interests in Applicants control any federally regulated interstate passenger motor carrier. (*Appl.* 3.)

As a result of the transaction, Applicants acquired from Sellers direct control of the outstanding equity membership in MJT Holdings, a noncarrier entity that holds all the outstanding membership interests in Carriers.³ (*Appl.* 2.) Prior to the transaction, Sellers and MJT Holdings did not control any federally regulated passenger motor carrier other than Carriers. (*Id.* at 3.)

Applicants describe Carriers as follows:

- Xplore is a Kentucky limited liability company, headquartered in Kentucky, that holds interstate carrier operating authority under FMCSA Docket No. MC-666448 and has a safety rating of “Satisfactory” from the U.S. Department of Transportation (USDOT). (*Id.* at 3-4.) Xplore provides charter transportation services for activities and events such as guided tours, group excursions, and recreational and entertainments events. (*Id.* at 4.) Xplore provides these services from its terminal facilities located in Louisville, Ky., and utilizes approximately 16 passenger vans, 14 minibuses, and 46 drivers. (*Id.*)
- Nashville is a Tennessee limited liability company, headquartered in Tennessee, that holds interstate carrier operating authority under FMCSA Docket No. MC-79453. (*Id.* at 3-4.) Applicants state that Nashville has no safety rating. (*Id.* at 4.) Nashville, like Xplore, provides charter transportation services for activities and events such as guided tours, group excursions, and recreational and entertainments events. (*Id.* at 5.) Nashville provides these services from its terminal facilities located in Nashville, Tenn., and utilizes approximately three passenger vans, five minibuses, and 14 drivers. (*Id.*)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges that result from the proposed transaction, and (3) the interest of affected carrier employees.

² According to the application, neither Applicants nor Sellers were aware until recently that the transaction was subject to the Board’s jurisdiction and approval. (*Appl.* 1, 5.) Applicants now request that the Board approve the transaction after the fact. (*See id.*) The Board has permitted parties to obtain after-the-fact licensing authority for a transaction when the failure to seek approval was without malice and by mistake. *See, e.g., McCarthy—Acquis. of Control—Trombly Motor Coach Serv., Inc.*, MCF 21094, slip op. at 2 n.2 (STB served Aug. 6, 2021) (citing *Winthrop Sargent—Acquis. of Control—Plymouth & Brockton St. Ry.*, MCF 21089, slip op. at 2 (STB served Jan. 3, 2020)).

³ Exhibit A to the application depicts the organizational structure of Carriers following the closing of the transaction. (*See Appl. Ex. A.*)

Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the transaction is consistent with the public interest under 49 U.S.C. 14303(b), see 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of the involved carriers exceeded \$2 million during the 12-month period immediately preceding the filing of the application, see 49 CFR 1182.2(a)(5). (See Appl. 5-9.)

Applicants assert that the transaction will not have a material, detrimental impact on the adequacy of transportation services available for the public. (Id. at 6.) Applicants state that although Carriers now operate within the holdings of Applicants, Xplore and Nashville continue to operate under the same names and provide services from the same locations used before the transaction. (Id.)

Applicants further assert that the transaction will have, at most, a minimal impact on the regulated motor carrier industry, and neither competition nor the public interest will be adversely affected. (Id. at 6, 8.) According to Applicants, there is no net gain in market power resulting from the transaction because Applicants do not have ownership interests in or control of other passenger motor carriers. (Id. at 8.) Applicants also represent that there will be no overlap in the service areas or customer bases of Carriers and Applicants, as Applicants do not currently operate any motor carrier service. (Id.) Applicants state that they will seek to grow Carriers' business by contracting with new customers and expanding services for existing customers. (Id.)

Additionally, although the transaction will increase fixed charges in the form of interest expenses because Applicants borrowed funds to finance the transaction, Applicants state that such increase will not impact the provision of transportation services to the public. (Id. at 6-7.) Applicants also assert that because they have continued, and intend to continue, the existing operations of Carriers, employees and labor conditions are not materially impacted. (Id. at 7.) Applicants further submit they do not anticipate any measurable reduction in force or changes in compensation levels or benefits at Carriers. (Id.)

The Board finds that the acquisition as described in the application is consistent with the public interest and should be tentatively approved and authorized after the fact. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6. If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action in this proceeding.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at www.stb.gov.

It is ordered:

1. The transaction is approved and authorized after-the-fact, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.
3. This notice will be effective September 4, 2024, unless opposing comments are filed by September 3, 2024. If any comments are filed, Applicants may file a reply by September 17, 2024.
4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.
5. This notice will be published in the Federal Register.

Decided: July 14, 2024.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.