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ATTORNEYS AT LAW  
WASHINGTON, D. C. 20036

TC-080374-A

February 20, 2008

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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

Honorable Anne K. Quinlan, Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

Re: Holland America Line Inc. - Control - Discover Alaska Tours, Inc., *et al.*  
STB Docket MC-F-

Dear Secretary Quinlin:

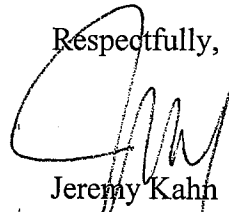
There are transmitted herewith the original and 10 copies of an application pursuant to 49 U.S.C. §14303(a) for approval of a transaction involving the acquisition of control involving multiple motor passenger carriers, all as more fully described in the application.

Also included are (1) a check payable to "Surface Transportation Board" in the amount of \$1,700 as the prescribed filing fee for this application, (2) two copies of a proposed *Federal Register* notice describing the application, and (3) a copy of this letter and a self-addressed stamped envelope with which to acknowledge receipt of this filing.

Copies of this letter and the application have been served upon those parties identified in the application's "Certificate of Service."

Should you require anything further, your request to the undersigned, counsel for the parties, shall receive immediate attention.

Respectfully,



Jeremy Kahn  
Counsel for the Parties

JK:hs

Enc.

CC: Kelly Clark, Esq.  
Parties as Identified in the Application's Certificate of Service

SERVICE DATE – \_\_\_\_\_, 2008

EB

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-

HOLLAND AMERICA LINE INC. – CONTROL – WESTOURS MOTORCOACHES, INC., EVERGREEN TRAILS, INC., WESTMARK HOTELS OF CANADA, LTD., HORIZON COACH LINES, LTD., and DISCOVER ALASKA TOURS, INC.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Holland America Line Inc., (“HAL”), a non-carrier, has filed an application under 49 U.S.C. 14303 to acquire control of newly registered motor passenger carrier Discover Alaska Tours, Inc. (“DAT”) (MC-636105). HAL, with appropriate regulatory approval, already controls four federally regulated motor passenger carriers, Westours Motorcoaches, Inc. (“WESTOURS”) (MC-118832); Evergreen Trails, Inc. (“EVERGREEN”) (MC-107638); Westmark Hotels of Canada, Ltd. (“WESTMARK”) (MC-405618); and Horizon Coach Lines Ltd. (“HORIZON”) (MC-144339). Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by \_\_\_\_\_, 2008. Applicants may file a reply by \_\_\_\_\_, 2008. If no comments are filed by \_\_\_\_\_, 2008, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F- \_\_\_\_\_ to: Surface Transportation Board, 395 E Street, S.W., 20423-0001. In addition, send one copy of comments to applicants’ representative, Jeremy Kahn, Kahn and Kahn, 1730 Rhode Island Ave., N.W., Suite 810, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: \_\_\_\_\_ [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339].

SUPPLEMENTARY INFORMATION: HAL, a non-carrier, controls either directly or through subsidiaries four motor passenger carriers, which operate primarily in performing charter and tour transportation in the Pacific Northwest, including Alaska, Washington, and adjoining Canadian Provinces. These four are WESTOURS,

EVERGREEN, WESTMARK, and HORIZON. A newly created company, DAT, is currently seeking initial Federal Motor Carrier Safety Administration registration as an interstate passenger carrier. HAL seeks approval of control of this fifth passenger carrier. No operating authorities are to be transferred as a result of the transaction.

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

The parties have submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). They state that the proposed transaction will not impact the adequacy of transportation services available to the public, reduce competition, adversely impact fixed charges, or adversely impact the interests of employees. They assert that granting the application will enhance service available to the public. Applicants have submitted all the other information required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from applicants' representative.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding 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(c). 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.

Board decisions and notices are available at our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.
2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.
3. This notice will be effective \_\_\_\_\_, 2008, unless timely comments are filed.

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 the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: \_\_\_\_\_, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan  
Acting Secretary

BEFORE THE  
SURFACE TRANSPORTATION BOARD

IN THE MATTER OF

HOLLAND AMERICA LINE INC.

-- CONTROL --

WESTOURS MOTORCOACHES, INC.  
EVERGREEN TRAILS, INC.  
WESTMARK HOTELS OF CANADA, LTD.  
HORIZON COACH LINES, LTD.  
and  
DISCOVER ALASKA TOURS, INC.

STB DOCKET NO. MC-F-

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APPLICATION UNDER 49 U.S.C. §14303  
FOR APPROVAL OF THE ACQUISITION OF CONTROL  
BY HOLLAND AMERICA LINE INC.  
OF DISCOVER ALASKA TOURS, INC.  
AND CONTINUANCE IN CONTROL OF  
FOUR OTHER MOTOR PASSENGER CARRIERS

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COME NOW, the parties named herein and respectfully submit this, their Application under 49 U.S.C. §14303(a) and STB Regulations at 49 CFR §1182 for approval of a "transaction," as described, *infra*, the end result of which will be the control by non-carrier Holland America Line Inc. of a fifth motor passenger

carrier, newly formed and registered Discover Alaska Tours, Inc., in addition to the four passenger carriers which it already controls, all as more fully described.

### **Parties to This “Transaction”**

#### Identity of the Parties

The parties to the proposed “transaction” are as follows.

Holland America Line Inc. (“HAL”), a non-carrier, is a Washington Corporation, which with previous STB authorization now controls four Federal Motor Carrier Safety Administration (“FMCSA”) registered motor passenger carriers, and which, upon approval of this application, will control a fifth FMCSA registered motor passenger carrier.

The four FMCSA registered motor passenger carriers already controlled by HAL are:

Evergreen Trails, Inc., d/b/a Gray Line of Seattle (“EVERGREEN”), which is a Washington corporation, registered with FMCSA in its Docket MC-107638.

Westours Motor Coaches, Inc. (“WESTOURS”), which is a Washington corporation, registered with FMCSA in its Docket MC-118832.

Westmark Hotels of Canada Ltd. (“WESTMARK”) which is a corporation formed under the laws of the Province of British Columbia, Canada, registered with FMCSA in its Docket MC-405618.

Horizon Coach Lines, Ltd. ("HORIZON") which is a corporation formed under the laws of the Province of British Columbia, Canada, registered with FMCSA in its Docket MC-144339.

The FMCSA registered motor passenger carrier which is to come under HAL's control is Discover Alaska Tours, Inc. ("DAT"), a newly formed Alaska corporation, whose application for initial FMCSA registration is pending in Docket MC-636105

Essential Information About the Parties

EVERGREEN, doing business as Gray Line of Seattle, is a Corporation whose principal office is located at 4500 Marginal Way, S.W. Seattle, WA 98106. EVERGREEN is engaged in interstate and foreign commerce as a motor passenger carrier pursuant to FMCSA registration at MC-107638 (USDOT No. 12016). EVERGREEN is also engaged in intrastate operations in Washington, pursuant to appropriate state authorization.

WESTOURS is a Corporation whose principal office is located at 300 Elliot Avenue West, Seattle, WA 98119. WESTOURS is engaged in interstate and foreign commerce as a motor passenger carrier pursuant to FMCSA registration at MC-118832 (USDOT No. 80587). WESTOURS is also engaged in intrastate operations in Alaska.

WESTMARK is a Corporation whose principal office is located at 999 Canada Place, World Trade Center, Vancouver, British Columbia, V6C 3C1

Canada. WESTMARK is engaged in foreign commerce as a motor passenger carrier pursuant to FMCSA registration at MC-495618 (USDOT No. 944769). WESTMARK is also engaged in domestic transportation within Canada pursuant to appropriate Provincial authority.

HORIZON is a Corporation whose principal office is located at 326 B Industrial Avenue, Vancouver, British Columbia, V6A 2P3 Canada. HORIZON is engaged in foreign commerce as a motor passenger carrier pursuant to FMCSA registration at MC-144339 (USDOT No. 175764). HORIZON is also engaged in domestic transportation within Canada pursuant to appropriate Provincial authority.

DAT is a newly formed Alaska corporation whose principal office is located at 300 Elliott Avenue West, Seattle, Washington 98119. DAT is an applicant for initial interstate operating authority before the FMCSA; its application in Docket MC-636105 (USDOT No. 1736644), filed February 11, 2008, is pending.

All of the “common control” relationships involving the HAL corporate family and the four motor passenger carriers already under common control have been previously approved by the STB (or its predecessor, Interstate Commerce Commission). The most recent STB approval of control by HAL of EVERGREEN, WESTOURS, WESTMARK, and HORIZON is evidenced by its decision in *Holland America Line -Westours, Inc. – Control – Westours*



*Motorcoaches, Inc., Evergreen Trails, Inc., Westmark Hotels of Canada Ltd. and Horizon Coach Lines Ltd.*, STB Docket No. MC-F-20988 (served February 22, 2002). The corporation known at that time as “Holland America Line-Westours, Inc.” is now known as “Holland America Line Inc.”

### **Pertinent Operating Authorities**

The interstate operating authority held by each of the four motor carriers already under HAL control permits generally the transportation of passengers in charter and special operations service throughout the United States; that held by the two Canadian domiciled carriers, WESTMARK and HORIZON, is limited to transportation in foreign commerce, as is common for Canadian domiciled carriers. DAT, the new entity, also seeks authority to transport passengers in charter and special operations throughout the United States.

More particularly, the FMCSA operating authorities of the parties are as follows:

EVERGREEN’s essential authority is that in its Certificate in MC-107638 (Sub 11-C), which authorizes, in part, charter and special operations services between points in the United States. <sup>1</sup>

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<sup>1</sup> EVERGREEN also holds contract authority in MC-107638 (Sub 11-P), authorizing transportation of passengers between points in the U.S., under contract with persons requiring passenger transportation, although the ICC Termination Act of 1995 eliminated the distinction between common and contract authority.

WESTOURS' essential authority is that in its Certificate in MC-118832 (Sub 11-C), which authorizes charter and special operations services between points in the United States.<sup>2</sup>

WESTMARK's essential authority is its Certificate in MC-405618, which authorizes charter and special operations services between points in the United States.

HORIZON's essential authority is its Certificate in MC-144339, which authorizes charter and special operations services between points in the United States.

DAT's pending FMCSA application in MC-636105 seeks authority to perform charter and special operations services between points in the United States.

### **Description of the Proposed "Transaction"**

The event triggering this application is the creation by HAL of DAT and DAT's application to FMCSA for initial operating authority (i.e., "registration"). Today, with STB approval in STB Docket No. MC-F-20988, *supra*, HAL, a non-carrier, already controls four motor passenger carriers, EVERGREEN, WESTOURS, WESTMARK, and HORIZON. With approval of DAT's pending application, HAL will then control a fifth motor passenger carrier.

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<sup>2</sup> WESTOURS' Sub 11-P permit corresponds to EVERGREEN's Sub 11-P Permit.

STB has jurisdiction over this “transaction,” pursuant to 49 U.S.C. §14303(a)(5), since it involves “the acquisition of control of a carrier [i.e., DAT] by a person that is not a carrier [i.e., HAL] but that controls any number of carriers [i.e., EVERGREEN, WESTOURS, WESTMARK, and HORIZON].” The “transaction” is DAT’s imminent award of FMCSA operating authority which will confer upon it status as a “carrier.”

#### **Federally Regulated Carrier Affiliates**

Other than the motor carriers identified above, there are no other affiliated carriers involved in this application, except that Royal Hyway Tours, Inc., Anchorage, Alaska, a motor carrier of passengers registered with FMCSA in MC-182214 (USDOT 259971), with a “satisfactory” safety rating, has a minority stock ownership interest in DAT, but as a minority shareholder, it does not exercise control.

#### **Jurisdictional Statement – Revenues**

The Surface Transportation Board has jurisdiction over this matter under 49 U.S.C. §14303(g), because the annual aggregate gross operating revenues of the four carriers already under HAL control significantly exceed \$2 million.

### **Environmental Impact**

The parties assert approval of this application will not constitute a Federal action having a significant effect on the quality of the human environment and the conservation of energy resources.

### **Public Interest Considerations**

#### **a. Adequacy of Transportation Services**

The proposed transaction will have no meaningful impact on the adequacy of transportation services available for the public. The “transaction” giving rise to this application involves only the initial registration of a new charter bus company, DAT, which is affiliated with a carrier group already thoroughly experienced in performing charter and tour services throughout the Pacific Northwest, including both the United States and Canada.

The addition of a fifth motor carrier to the HAL group is consistent with the practice throughout the bus industry of strong, well managed transportation organizations adapting their corporate structure to operate several different charter carriers to better serve each individual market niche in their service area. In part, HAL, which has decades of experience in operating tour-based services throughout the Pacific Northwest, has created DAT as a new entity to more effectively provide charter bus service in the southeast Alaska tour market, which has specialized service characteristics. Thus, it is an example of creating an

affiliated entity to better serve a market niche. This helps to assure the provision of adequate service for the public.

Creation of this new entity will serve to enhance the viability of the overall HAL organization and the bus operations of its carriers EVERGREEN, WESTOURS, WESTMARK, and HORIZON; the continued viability of all the carriers assures the continued availability of adequate bus service for the public.

b. Fixed Charges

There are no fixed charges associated with the proposed “transaction.”

c. Employee Interests

No carrier operations employees will be adversely affected by the contemplated “transaction.” The creation of DAT will provide opportunities for increased employment throughout the territory it serves.

d. Competition and the Public Interest

The law requires the STB to assess competition in the market and the impact on the public interest as affected by approving an arrangement in which multiple passenger carriers are under control of a single economic entity. In making its analysis, the Board (as did its predecessor, Interstate Commerce Commission) has without exception found that proposed “common control” arrangements (however accomplished) are inherently not anti-competitive. That conclusion rests upon the finding that as a result of the ease of entry, the bus industry is characterized by healthy intra-modal competition as well as healthy

competition between bus service, on the one hand, and on the other, other modes of transportation, all of which constitute the “relevant market.” *GLI Acquisition Co. – Purchase – Trailways Lines, Inc.*, 4 I.C.C. 2d 591, 598-602 (1988)

The Greyhound – Trailways merger dealt with the only two nationwide, scheduled service carriers; scheduled service is a segment of the industry in which there are potential barriers to entry (i.e., terminal access) and a lessening of competition might be thought to at least be a potential issue for concern, but even there, the competitive nature of that business allayed any anti-competition concerns there might have been.

This HAL application, however, involves carriers engaged in the charter and tour segment of the industry, which is vastly more competitive than the scheduled service sector. Indeed, in recent years, the Board has been called upon to consider numerous such applications as consolidation within the charter bus industry has led to a handful of larger entities acquiring many, many smaller charter and tour carriers and operating them under common control. In *each and every instance*, the Board approved these applications without any concern for competition considerations and found them to be in the public interest.

All the HAL motor carriers are a part of a coordinated group; they are not in direct competition with one another, so the common control by HAL of one more carrier will have no impact on competition within the market. As stated above, to the parties’ best knowledge, in treating applications under §14303, the

STB has consistently and without exception found the passenger transportation business so inherently competitive due to the low barriers to entry by new competitors, especially for a new charter carrier. The Interstate Commerce Commission's findings on this issue remain true today for this segment of the transportation business. *GLI Acquisition Co. – Purchase – Trailways Lines, Inc.*, 4 I.C.C. 2d 591, 598-602 (1988).

In very recent years, on the rare occasions in which the STB has been called upon to assess the “public interest” and “competition” issues inherent in the practice of the acquisition of ownership of numerous bus carriers by non-carrier entities, it has consistently and without exception approved each and every application of this sort, finding that acquisitions that contemplate the single control of numerous passenger carriers can result in better overall service for the public without any lessening of the benefits of healthy competition. A few more recent examples of many such decisions include *Firstgroup PLC – Acquisition – Cognisa Transportation, Inc.*, STB Docket No. MC-F-21021 (served July 30, 2007) and *Fenway Partners Capital Fund III, L.P., et al.–Control–Coach America Holdings, Inc., et al.*, STB Docket No. MC-F-21019 (served December 29, 2006) as well as similar holdings where regular route carriers (and a bit more concern about the impact on competition) have been involved in *Firstgroup PLC - Acquisition - Laidlaw International, Inc.*, STB Docket No. MC-F-21020 (served April 15, 2007)

and *Stagecoach Group PLC, et al. – Control Megabus USA LLC*, STB Docket No. MC-F-21016 (served June 13, 2006)

In each decision in recent years – if not uniformly since the Board assumed jurisdiction over such transactions in 1996 – the Board has found that such common control arrangements are consistent with the public interest and it has approved them. The same finding is warranted here.

#### **U.S. DOT Safety Fitness Rating**

The U.S. Department of Transportation Safety Rating for each of EVERGREEN, WESTOURS, WESTMARK, and HORIZON is “satisfactory.” DAT, as a newly registered carrier, has not been assigned a safety rating.

#### **Insurance Certification**

Each of the five involved motor carriers now satisfies and after STB approval will continue to satisfy FMCSA requirements relating to adequate security for the public. 49 U.S.C. §13906. Among the four existing, controlled carriers, EVERGREEN and WESTOURS are authorized by FMCSA to self-insure the first \$1 million layer of their required \$5 million BI&PD insurance, each maintains commercial insurance in excess of the self-insured limits, and each has filed appropriate evidence of such insurance with FMCSA. WESTMARK, HORIZON, each have appropriate evidence of required \$5 million insurance



coverage on file with FMCSA. DAT is in the process of having such evidence of insurance filed with FMCSA.

### **Mexico Certification**

The parties certify that none of the companies named in this application is domiciled in Mexico, nor are they owned or controlled by persons of that country.

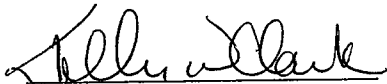
### **Verification**

Each person signing this application verifies under penalty of perjury, under the laws of the United States of America, that all information supplied by such person on behalf of the company which he represents in connection with this application is true. Further, each person signing this application is qualified and authorized to file this application.

Each person signing further certifies under penalty of perjury under the laws of the United States, that he knows that willful misstatements or missions of material facts 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.

### ENTITY IN CONTROL

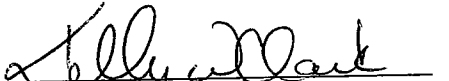
Holland America Line Inc.



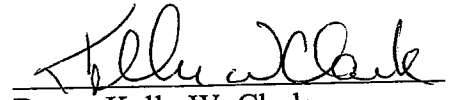
By: Kelly W. Clark  
Vice President, Secretary

ENTITIES NOW UNDER HAL CONTROL


Evergreen Trails, Inc.

  
By: Kelly W. Clark  
Vice President, Secretary

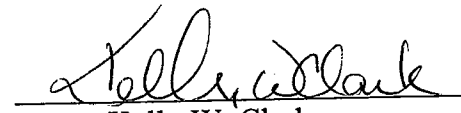
Westours Motorcoaches, Inc.

  
By: Kelly W. Clark  
Vice President, Secretary

Westmark Hotels of Canada, Ltd.


  
By: Kelly W. Clark  
Vice President, Assistant Secretary

Horizon Coach Lines, Ltd.

  
By: Kelly W. Clark  
Vice President, Secretary

ENTITY TO BE CONTROLLED BY HAL

Discover Alaska Tours, Inc.

  
By: Kelly W. Clark  
Secretary

**Applicants' Representative**

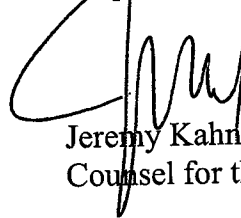
The parties' representative is:

Jeremy Kahn, Esq.  
Kahn and Kahn  
1730 Rhode Island Ave., N.W., Suite 810  
Washington, DC 20036  
Telephone (202) 887-0037  
Facsimile (202) 833-1219

**Conclusion**

As provided by 49 CFR §1182 and for the reasons set forth herein, the Surface Transportation Board is requested respectfully to approve this application and authorize the transaction and acquisition of control as described herein.

Respectfully,



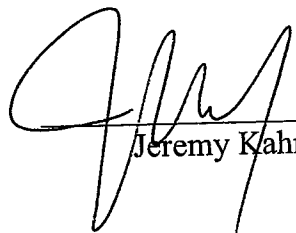
Jeremy Kahn  
Counsel for the Parties

Jeremy Kahn, Esq.  
Kahn and Kahn  
1730 Rhode Island Ave., N.W., Suite 810  
Washington, DC 20036  
Telephone (202) 887-0037  
Facsimile (202) 833-1219

### Certificate of Service

I hereby certify that as required by 49 CFR §1182.3, I have served a copy of the foregoing Application by mailing a copy thereof, via First Class Mail, postage prepaid 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; (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590; and (4) the state regulatory agency for the state in which one or more of the involved carriers hold intrastate authority, namely the Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250.

Dated at Washington, DC, this 20<sup>th</sup> day of February, 2008.

  
\_\_\_\_\_  
Jeremy Kahn