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SERVICE DATE — AUGUST 6, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21095

VAN POOL TRANSPORTATION LLC—ACQUISITION OF CONTROL—NRT BUS, INC.
AND TROMBLY MOTOR COACH SERVICE INC.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: Van Pool Transportation LLC (Applicant), a Delaware limited liability company and a noncarrier, has filed an application for authority after-the-fact to acquire control of NRT Bus, Inc. (NRT), and Trombly Motor Coach Service Inc. (Trombly) from John J. McCarthy (Seller). The Board is tentatively approving and granting after-the-fact authorization of the transaction, and, if no opposing comments are timely filed in this docket or in the related action, McCarthy—Acquisition of Control—Trombly Motor Coach Service Inc., Docket No. MCF 21094, this notice will be the final Board action.¹

DATES: Comments may be filed by September 27, 2021. If any comments are filed, Applicant may file a reply by October 11, 2021. If no opposing comments are filed by September 27, 2021, this notice shall be effective on September 28, 2021.

ADDRESSES: Comments may be filed with the Board via e-filing on the Board's website. In addition, one copy of any comments must be sent to Applicant's representative: Andrew K. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W. Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

¹ In McCarthy—Acquisition of Control—Trombly Motor Coach Service Inc., Docket No. MCF 21094, Seller has filed an application for after-the-fact authority to acquire Trombly in a transaction that occurred in 2013. Today, the Board is tentatively approving that transaction. However, if opposing comments are filed in that docket, it may necessitate further Board action in this docket as well.

SUPPLEMENTARY INFORMATION: According to the application,² Applicant is a Delaware limited liability company³ that, prior to the transaction, did not own or control any passenger motor carriers. (Appl. 2.) Prior to the transaction, Seller held all the issued and outstanding equity shares of NRT and Trombly, two passenger motor carriers. (*Id.*) On September 30, 2019, Seller transferred all his ownership interest in NRT and Trombly to Applicant. (*Id.* at 1.) NRT and Trombly held, and continue to hold, interstate passenger motor carrier authority in the United States through the Federal Motor Carrier Safety Administration (FMCSA).⁴ (Appl. 3.)

Applicant provides the following description of the two carriers:

- NRT primarily provides non-regulated student school bus transportation services in the Commonwealth of Massachusetts—in the counties of Essex, Middlesex, Norfolk, Suffolk, and Worcester—and occasionally provides charter services when its buses are not in use for school activities. At the time of the transaction, it utilized a fleet of approximately 1,320 passenger vehicles, consisting of school buses, mini-buses, and passenger vans, and it used approximately 1,400 drivers. It currently utilizes a fleet of approximately 1,490 passenger vehicles, consisting of school buses, mini-buses, and vans; and it uses approximately 1,221 drivers. (Suppl. Appl. 2.)
- Trombly primarily provides non-regulated student school bus transportation services in the Commonwealth of Massachusetts—in the counties of Essex and Middlesex—and occasionally provides charter services when its buses are not in use for school activities. At the time of the transaction, it utilized a fleet of approximately 266 passenger vehicles, consisting of school buses, mini-buses, and passenger vans, and Trombly used approximately 280 drivers. Currently, it utilizes a fleet of

² The application was initially filed on May 4, 2021. On June 3, 2021, the Board issued a decision requiring Applicant to submit additional information in support of its application. Applicant filed an unverified supplement to its application on June 30, 2021, and a verification to that supplement pursuant to 49 C.F.R. § 1182.2(c) on July 12, 2021. Therefore, for purposes of calculating the procedural schedule and statutory deadlines, the filing date of the application is July 12, 2021. See 49 C.F.R. § 1182.4(a).

³ Further information about Applicant's corporate structure and ownership can be found in the Application. (See Appl. 4; *id.* at Ex. B.)

⁴ Applicant states it did not seek approval of the transaction before it was completed because neither Applicant nor the Seller were aware that the transaction was subject to the Board's jurisdiction. (Appl. 1.) Applicant now requests that the Board approve the transaction after-the-fact. (*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 Winthrop Sargent—Aquis. of Control—Plymouth & Brockton St. Ry., MCF 21089, slip op. at 2 (STB served Jan. 3, 2020) (citing Allied Indus. Dev. Corp.—Pet. for Declaratory Order, FD 35477, slip. op. at 6 (STB served Sept. 17, 2015), and Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Cntys., Iowa, FD 34867, slip op. at 5 (STB served June 15, 2007)).

approximately 266 passenger vehicles, consisting of school buses, mini-buses, and vans, and it uses approximately 142 drivers. (Id. at 3.)⁵

As a result of the transaction, Applicant owned and controlled 100% of the equity and voting interest in NRT and Trombly. (Appl. 2.)

Applicant claims that the transaction has not had, and will not have, a material, detrimental impact on the adequacy of transportation services available to the public. (Id. at 6.) Since the transaction closed on September 30, 2019, the services previously provided by NRT and Trombly have continued to be provided by them. (Id. at 5.) Applicant represents that it anticipates that the transportation services provided to the public by NRT and Trombly will be maintained and possibly expanded. (Id. at 5-4.)

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) total fixed charges that result, and (3) the interest of affected carrier employees. Applicant has submitted the information required by 49 C.F.R. § 1182.2, including information to demonstrate that the transaction is consistent with the public interest under 49 U.S.C. § 14303(b), see 49 C.F.R. § 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 C.F.R. § 1182.2(a)(5). (Appl. 5.)

Applicant states that NRT and Trombly have continued to operate since the transaction. (Id. at 6.) Applicant represents that the transportation services available to the public will be maintained and possibly expanded. (Id.) Applicant further represents that it is experienced in the same market segments served by NRT and Trombly—non-regulated student home to school transportation—and, because of Applicant’s passenger carrier management capacity, the transaction will result in improved operating efficiencies, increased equipment utilization rates, and cost savings. (Id.; Suppl. Appl. 7.) Specifically, the transaction has allowed NRT and Trombly to take advantage of increased purchasing power for such items as equipment, parts, fuel, and insurance. (Suppl. Appl. 7.) Thus, Applicant states, the transaction has helped strengthen the financial position of both carriers and has helped them effectively compete with other carriers in their respective geographic markets with “good equipment and sound safety records.” (Id.)

Applicant states that although the transaction increased fixed charges, in the form of interest expenses, the increase has not and will not impact the provision of transportation services to the public. (Appl. 6-7.)

⁵ Additional information about these motor carriers, including U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in the application. (See Appl. 3; id. at Ex. A.)

Finally, Applicant asserts that the transaction did not have a substantial impact on employees or labor conditions because Applicant has continued the existing operations of NRT and Trombly. (Id. at 7.) According to Applicant, the reduction in the number of drivers used by the passenger motor carriers is the results of NRT's and Trombly's inability "to find, hire and retain additional qualified drivers," in part due to the COVID-19 pandemic. (Suppl. Appl. 8.)

The Board finds that the acquisition as described in the application, as supplemented, 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, if a final decision cannot be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 C.F.R. § 1182.6. If no opposing comments are filed by the expiration of the comment period,⁶ this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 C.F.R. § 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 28, 2021, unless opposing comments are filed by September 27, 2021. If any comments are filed, Applicant may file a reply by October 11, 2021.
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.

Decided: August 5, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

⁶ As noted in footnote 1, above, if opposing comments are filed in MCF 21094, it may necessitate further Board action in this docket as well.