

302252

ENTERED
Office of Proceedings
May 4, 2021
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

IN THE MATTER OF

VAN POOL TRANSPORTATION LLC

-- ACQUISITION OF CONTROL --

SALTER TRANSPORTATION, INC.

DOCKET NO. MCF 21096

VERIFIED APPLICATION UNDER 49 U.S.C. § 14303(a)
FOR APPROVAL OF THE ACQUISITION OF CONTROL OF
SALTER TRANSPORTATION, INC.
BY VAN POOL TRANSPORTATION LLC

Van Pool Transportation LLC, a Delaware limited liability company and a noncarrier ("Applicant"), respectfully submits this Application under 49 U.S.C. § 14303 and Surface Transportation Board (the "STB" or "Board") regulations at 49 C.F.R. Part 1182 (this "Application") for approval of the transaction more fully described herein (the "Transaction"). The result of the Transaction was the direct acquisition of control by Applicant of the regulated interstate passenger motor carriers, Salter Transportation, Inc., a Massachusetts corporation ("Salter"), from Stephen O. Gadd, an individual ("Seller"). The Transaction was completed on June 12, 2020; however, the parties to the Transaction, Applicant and Seller, were not aware until recently that the Transaction was subject to the jurisdiction of the Board. As explained below, the portion of the passenger transportation business of Salter that involves interstate passenger trips, and correspondingly requires interstate passenger motor carrier authority, is very small.

FEE RECEIVED
May 4, 2021
SURFACE
TRANSPORTATION BOARD

FILED
May 4, 2021
SURFACE
TRANSPORTATION BOARD

I. Parties of the Contemplated Transaction, Pertinent Operating Authorities, and USDOT Safety Fitness Ratings (49 C.F.R. § 1182.2(a)(1) and (2)).¹

A. Purchaser: Applicant. Applicant is a Delaware limited liability company, headquartered at 70 Post Office Park, Suite 7003, Wilbraham, MA 01095. Applicant is not a federally-regulated carrier; however, as the result of the Transaction, Applicant owns and controls 100% of the equity and voting interest in Salter. Applicant, with its operating subsidiaries (the “Applicant Subsidiaries”), is an experienced and reliable provider of transportation services to the public, delivering passenger transportation and mobility solutions for regional transit authorities, school districts, health insurance companies, retirement communities, and other organizations in the New England Area of the United States. Among the Applicant Subsidiaries (not including Salter) are two (2) passenger motor carriers that hold interstate passenger motor carrier authority: NRT Bus, Inc. (“NRT”), and Trombly Motor Coach Service, Inc. (“Trombly”, and together with NRT, collectively, the “Affiliate Regulated Carriers”). The services provided by Applicant and the Applicant Subsidiaries, excluding the Affiliate Regulated Carriers, do not involve interstate transportation or require interstate passenger authority, and the services provided by the Affiliate Regulated Carriers that require interstate passenger motor carrier authority (interstate charter) are a very small and limited part of those services.

B. Affiliate Regulated Carriers of Applicant. Prior to the closing of the Transaction, Applicant owned and controlled the following passenger motor carriers that held interstate passenger motor carrier authority in the United States:

- (i) NRT. NRT is a Massachusetts corporation, providing primarily non-regulated student home to school transportation services in the state of

¹ This Application is organized to follow the elements set forth in the applicable rules of the Board at 49 C.F.R. § 1182.2(a).

Massachusetts, and occasional charter services at times that its buses are not in use for school activities. The USDOT Number assigned to NRT is 1166825, and NRT has a “Satisfactory” USDOT Safety Rating. For purposes of its interstate passenger operations (which are limited to occasional charter services), NRT holds interstate carrier operating authority under Federal Motor Carrier Safety Administration (“FMCSA”) Docket No. MC-595581. NRT’s principal place of business is located at 55 Hampshire Road, Methuen, MA 01844. In providing its services, NRT uses approximately 1,425 passenger carrying vehicles (consisting of school buses, mini-buses, and vans) and 1,425 drivers.

(ii) Trombly. Trombly is a Massachusetts corporation with its primary place of business at 16 Commercial Drive, Dracut, MA 01826. Trombly, like NRT, primarily provides non-regulated student home to school transportation services in the commonwealth of Massachusetts, and occasional charter services at times that its buses are not in use for school activities. The USDOT Number assigned to Trombly is 106905. For purposes of its interstate passenger operations (which are also limited to occasional charter services), Trombly holds interstate carrier operating authority under FMCSA MC-116313. Trombly, has a “Satisfactory” USDOT Safety Rating. In providing its services, Trombly uses approximately 275 passenger vehicles (consisting of school buses, mini-buses, and vans) and 142 drivers.

C. Seller. Prior to the closing of the Transaction, all of the issued and outstanding equity shares of Salter were held by Seller, an individual U.S. citizen and resident of the commonwealth of Massachusetts. Seller’s business operations are headquartered at 196 Scotland Road, Newbury, MA 01951. Seller had and has no direct or indirect control of any interstate passenger motor carrier other than Salter.

D. Salter. Salter is a Massachusetts corporation, providing primarily non-regulated student home to school transportation services in the commonwealth of Massachusetts and the state of New Hampshire, and occasional charter services at times that its buses are not in use for school activities. The USDOT Number assigned to Salter is 2446427, and Salter has a “Satisfactory” USDOT Safety Rating. For purposes of its interstate passenger operations (which are limited to occasional charter services), Salter holds interstate carrier operating authority under Federal Motor Carrier Safety Administration (“FMCSA”) Docket No. MC-190881. Salter’s principal place of business is located at 196 Scotland Road, Newbury, MA 01951. In providing its services, NRT uses approximately 148 passenger carrying vehicles (consisting of school buses) and 155 drivers.

E. Summary Table. A summary table of the USDOT Numbers, FMCSA Docket Numbers, and USDOT Safety Ratings of Applicant, Seller, the Affiliate Regulated Carriers, and Salter is attached hereto as Exhibit A.

II. Description of the Contemplated Transaction (49 C.F.R. § 1182.2(a)(3)).

The event triggering STB jurisdiction is the acquisition of the issued and outstanding equity shares of Salter by Applicant, the effect of which was to place Salter under the control of Applicant. As such, STB’s jurisdiction is invoked by 49 U.S.C. § 14303(a)(5), as the Transaction involves “acquisition of control of a carrier [*i.e.*, Salter] by a person that is not a carrier but that controls any number of carriers [*i.e.*, Applicant].”

III. Other Federally Regulated Carrier Affiliates (49 C.F.R. § 1182.2(a)(4)).

Other than the Affiliate Regulated Carriers and Salter as described above, there are no other carriers with regulated interstate operations involved in this Application. The Transaction resulted in Salter being acquired, owned and controlled by Applicant, and Seller having no control of any regulated interstate passenger carrier. The intercorporate structure of Applicant is as follows:

Applicant is wholly owned by VP Intermediate Company, a Delaware corporation and non-carrier holding company ("VP Intermediate"). VP Intermediate is wholly owned by Beacon Mobility Corp., a Delaware corporation and non-carrier holding company ("Beacon"). Beacon is wholly owned by Van Pool Intermediate, Inc., a Delaware corporation and non-carrier holding company ("Intermediate Inc."). Intermediate Inc. is wholly owned by Van Pool Group Holdings, L.P., a Delaware limited partnership and non-carrier holding company ("Group Holdings"). Group Holdings is majority-owned and controlled by AG Van Pool Holdings, LP, a Delaware limited partnership and non-carrier holding company ("AG Holdings"). AG Holdings is owned by investment funds affiliated with Audax Management Company, LLC, a Delaware limited liability company (the "Audax Funds"). The intercorporate structure of Applicant is set forth on Exhibit B attached hereto. Neither the Audax Funds, AG Holdings, Group Holdings, Intermediate Inc., Beacon, nor VP Intermediate has interstate passenger motor carrier authority, a USDOT Number, nor a USDOT Safety Rating. Additionally, neither the Audax Funds, AG Holdings, Group Holdings, Intermediate Inc., Beacon, nor VP Intermediate controls any regulated interstate passenger carriers other than as set forth in this Application.

IV. Jurisdictional Statement – Revenues (49 C.F.R. § 1182.2(a)(5)).

The STB has jurisdiction over this matter under 49 U.S.C. § 14303(g), because the annual aggregate gross operating revenues of Applicant and Salter exceeded \$2 million during the 12-month period immediately preceding the closing of the Transaction.

V. Environmental Impact (49 C.F.R. § 1182.2(a)(6)).

Approval of this Application and consummation of the Transaction will not have a significant effect on the quality of the human environment and the conservation of energy resources. The Transaction is merely a change in control of carriers that already provide

regular school bus services and limited charter services. No environmental impact is expected.²

VI. Public Interest Considerations (49 C.F.R. § 1182.2(a)(7)).

The Board “shall approve and authorize a transaction” when it finds that the transaction is “consistent with the public interest.” 49 U.S.C. § 14303(b). The statutory factors the Board must consider are the “adequacy of transportation to the public,” “total fixed charges that result...” and the “interest of carrier employees affected...” *Id.*

A. Adequacy of Transportation Services. The Transaction has not had and will not have a material, detrimental impact on the adequacy of transportation services available for the public. Applicant anticipates that services of Salter available to the public will be maintained and possibly expanded. The services provided by Salter have continued to be provided by Salter under the same names, respectively, used to provide such services prior to the Transaction. Salter has and will continue to operate, but going forward, has been operated and will continue to be operated within the holdings of Applicant, an organization thoroughly experienced in school bus and other transportation operations.

The addition of Salter to the holdings of Applicant is consistent with the practices within the passenger motor carrier industry of strong, well-managed transportation organizations adapting their corporate structure to operate several different passenger carriers within similar services markets, but in different geographic areas. The Transaction will bring Salter under the control of Applicant, which is experienced in the same market segments served by Salter, being the non-regulated student home to school market segment.

² The Board has found similar transactions to be categorically excluded from environmental review under 49 C.F.R. § 1105.6(c). *See, e.g., All Aboard America! Holdings, Inc. – Acquisition of Control – Lux Bus America Co.*, STB Finance Docket No. MCF 21082, at 5 (STB served Sept. 21, 2018). Section 1105.6(c) categorically excludes Section 14303 transactions that do not implicate operational changes that exceed certain specified thresholds.

Such market segment has its own service characteristics, and the Transaction, combined with the passenger carrier management capacity of Applicant, is expected to result in improved operating efficiencies, increased equipment utilization rates, and cost savings derived from economies of scale within the Applicant Subsidiaries, all of which will help to ensure the provision of adequate service to the public.

The addition of Salter to Applicant's organization will serve to enhance the viability of Applicant's organization and the Applicant Subsidiaries. The continued viability of Applicant and the Applicant Subsidiaries assures the continued availability of adequate passenger transportation service for the public in the areas served by the Applicant Subsidiaries.

B. Fixed Charges. The Transaction increased fixed charges, in the form of interest expense, because funds were borrowed to assist in the financing of the Transaction. However, such an increase has not and will not impact the provision of transportation services to the public. The Board has approved transactions that use debt financing in the past, despite some increase to interest expense. See, e.g., *Variant Equity I, LP, and Project Kenwood Acquisition, LLC – Acquisition of Control – Coach USA Administration, Inc., and Coach USA, Inc.*, STB Docket No. 21084, at 4 (served February 15, 2019), and *Sureride Charter Inc. – Acquisition of Control – McClintock Enterprises, Inc., D/B/A Goldfield State & Co.*, STB Docket No. 21077, at 3 (served November 2, 2017).

C. Employee Interests. Applicant has continued the existing operations of Salter and as such, the Transaction has not substantially impacted employees or labor conditions.

D. Competition and the Public Interest. The law requires the Board 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 entity. In making such analysis, the Board (as did its predecessor, the Interstate Commerce

Commission) has consistently found that proposed “common control” arrangements (however accomplished) are inherently not anti-competitive. In large measure, that conclusion rests on the finding that as a result of the ease of entry into the market, the passenger motor carrier 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).

On the rare occasions in recent years 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 approved applications 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. Its decisions include *National Express LLC – Acquisition of Control – Premier Transportation, LLC*, STB Docket No. MCF 21091 (served March 12, 2020); *Winthrop Sargent, John Cogliano, and Paul Fuerst – Acquisition of Control – Plymouth and Brockton Street Railway Company, Brush Hill Transportation Company, and McGinn Bus Company, Inc.*, STB Docket No. MCF 21089, (served January 3, 2020); *Transportation Demand Management Holdings, LLC – Acquisition of Control – Badger Bus Transportation Group, Inc.*, STB Docket No. MCF 21088 (served November 8, 2019); and *AAAH Regional Acquisition LLC – Acquisition of Control – First Class Tours, Inc. and Sierra Stage Coaches, Inc.*, STB Docket No. MCF 21087 (served November 1, 2019).

As previously mentioned, the primary marketplace served by Salter is the non-regulated home to school student transportation services in the commonwealth of Massachusetts and the state of New Hampshire, with limited charter services. Salter

competes directly with other providers of home to school transportation providers, of which there are many, in competitive bidding for contracts with public school districts to provide student transportation. The home to school student transportation marketplace is competitive due to the number of providers, the competitive bidding process that is applicable to the contracts, and the fact that many users of these transportation services evaluate the cost efficiencies of the services provided by third-parties (such as Salter) against the costs of providing the services internally.

School buses have limited appeal for charter services, when compared to (i) more comfortable motor coaches offered by motor coach operators, and (ii) the equipment availability constraints imposed by the scheduling demands of school bus operations. Thus, the charter services provided by Salter do not constitute significant competition to charter companies. In addition, of the limited charter services that Salter provides, only a very small portion of those trips are interstate. Considering the foregoing, it is clear that the impact of the Transaction on the regulated motor carrier industry will be minimal at most and that neither competition nor the public interest will be adversely affected.

VII. Safety Fitness Certification (49 C.F.R. § 1182.2(a)(8)).

Applicant and Seller hereby certify, and as stated above, the safety rating by the USDOT for each of the motor carriers is as set forth hereinabove and as summarized on Exhibit A.

VIII. Insurance Certification (49 C.F.R. § 1182.2(a)(9)).

Each of the motor carriers that is subject to FMCSA insurance requirements and is involved in this Application now satisfies and after Board approval of this Application will continue to satisfy FMCSA requirements relating to adequate security for the public. 49 U.S.C. § 13906. All of the FMCSA approved carriers have a minimum of \$5 million bodily injury and property damage insurance coverage on file with the FMCSA.

IX. Mexico Certification (49 C.F.R. § 1182.2(a)(10)).

A. Applicant. Applicant certifies that neither it nor any person controlling it is domiciled in Mexico, nor owned or controlled by persons of that country.

B. Salter. Seller certifies that Salter is neither domiciled in Mexico, nor owned or controlled by persons of that country.

X. No Individuals Holding Operating Authority (49 C.F.R. § 1182.2(a)(11)).

The Transaction does not involve the transfer of operating authority to an individual who will hold the authority in his or her name.

XI. Exempt Transaction under Federal Premerger Notification Laws.

Pursuant to 15 U.S.C. § 18a(c)(6), this Application and copies of all other information and documentary material filed with the Board in connection with the Contemplated Transaction are being filed with the United States Federal Trade Commission and the Antitrust Division of the United States Department of Justice in keeping with the Contemplated Transaction's status under the regulated-industry provisions of that statute.

XII. Prior Transactions Involving NRT, Trombly and Applicant.

A. Prior Transaction No. 1. NRT and Trombly were involved in a transaction prior to the Transaction on April 13, 2013 ("Prior Transaction No. 1"), in which John J. McCarthy, an individual ("John McCarthy") acquired Trombly from Michael J. Trombly, an individual ("Michael Trombly"), and at which time John McCarthy already owned and controlled NRT. Neither John McCarthy nor Michael Trombly was at that time aware that Prior Transaction No. 1 was subject to the jurisdiction and approval of the Board. In that respect, John McCarthy has simultaneously with the filing of this Application filed his application (*John J. McCarthy – Acquisition of Control – Trombly Motor Coach Service Inc.*; STB Docket No. MCF 21094) requesting the Board's approval of Prior Transaction No. 1.

B. Prior Transaction No. 2. NRT, Trombly and Applicant were involved in

transaction on September 30, 2019 (“Prior Transaction No. 2”), whereby Applicant acquired NRT and Trombly from John McCarthy. Neither Applicant nor John McCarthy was at that time aware that either of the prior transactions was subject to the jurisdiction and approval of the Board. In that respect, Applicant has simultaneously with the filing of this Application filed its application (*Van Pool Transportation LLC – Acquisition of Control – NRT Bus Inc. and Trombly Motor Coach Services, Inc.*; STB Docket No. MCF 21095) requesting the Board’s approval of Prior Transaction No. 2.

XIII. Conclusion.

As provided by 49 C.F.R. Part 1182 and for the reasons set forth herein, the Board is respectfully requested to approve this Application and authorize the Transaction and acquisition of control as described herein.

XIV. Verification.

The verifications of Applicant and Seller are as follow:

[Remainder of Page Intentionally Blank – Verification and Signature Pages Follow]

A. Verification of Applicant. The undersigned verifies under penalty of perjury under the laws of the United States of America, that all information supplied by such person on behalf of and limited to Applicant in connection with this Application is true and correct. Further, the undersigned is qualified and authorized to submit this verification and file this Application. The undersigned further certifies under penalty of perjury under the laws of the United States, that she knows that willful misrepresentations or omissions 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 under 18 U.S.C. § 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

“Applicant”

Van Pool Transportation LLC

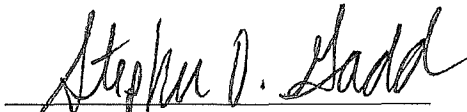
Dated: April 30, 2021

By: J Crawford
Judith Crawford
Chief Executive Officer

B. Verification of Seller. The undersigned verifies under penalty of perjury under the laws of the United States of America, that all information supplied by such person on behalf of and limited to Seller and Salter, as applicable, in connection with this Application is true and correct. Further, the undersigned is qualified and authorized to submit this verification and authorize the filing of this Application. The undersigned further certifies under penalty of perjury under the laws of the United States, that he knows that willful misrepresentations or omissions 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 under 18 U.S.C. § 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

“Seller”

Dated: April 30, 2021



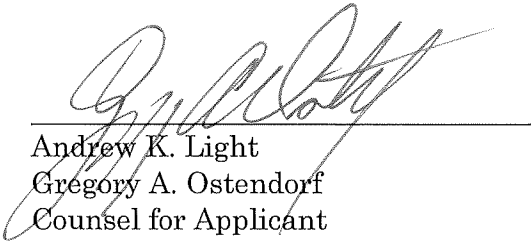
Stephen O. Gadd

XV. Applicant Legal Counsel.

“Applicant”

Andrew K. Light
Gregory A. Ostendorf
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
10 W. Market Street, Suite 1400
Indianapolis, IN 46204
(317) 637-1777

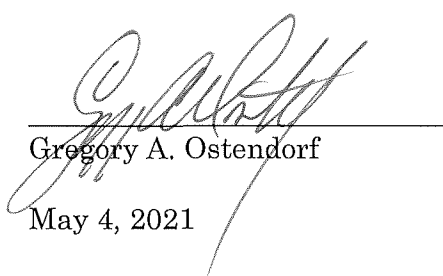
Respectfully,



Andrew K. Light
Gregory A. Ostendorf
Counsel for Applicant

Certificate of Service

I hereby certify that as required by 49 C.F.R. § 1182.3, I have served a copy of the foregoing Application by mailing a copy thereof, via U.S. first-class mail on the U.S. Department of Transportation, Chief Licensing and Insurance Division, 1200 New Jersey Avenue, S.E., Mail Stop W65-331, Washington, DC 20590; and the state regulatory agency for the states in which intrastate operations are affected. I further certify that as required by 15 U.S.C. § 18a(c)(6), I have also served a copy of the foregoing Application, and copies of all other information and documentary material filed with the Surface Transportation Board in connection with the Contemplated Transaction, via overnight courier on the United States Federal Trade Commission and the Antitrust Division of the United States Department of Justice.



Gregory A. Ostendorf

May 4, 2021

<u>Exhibit A</u>			
<u>Entity or Person Names</u>	<u>USDOT No.</u>	<u>FMCSA Docket No.</u>	<u>USDOT Safety Rating</u>
Van Pool Transportation LLC (Applicant)	None	None	None
NRT Bus Inc.	1166825	MC-595581	Satisfactory
Trombly Motor Coach Service Inc.	106905	MC-116313	Satisfactory
Stephen O. Gadd (Seller)	None	None	None
Salter Transportation, Inc.	2446427	MC-190881	Satisfactory

Exhibit B

Attached

