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BEFORE THE
SURFACE TRANSPORTATION BOARD

IN THE MATTER OF

JOHN J. MCCARTHY

– ACQUISITION OF CONTROL –

TROMBLY MOTOR COACH SERVICE INC.

DOCKET NO. MCF 21094

VERIFIED APPLICATION UNDER 49 U.S.C. § 14303(a)
FOR APPROVAL OF THE ACQUISITION OF CONTROL OF TROMBLY MOTOR
COACH SERVICE INC., BY JOHN J. MCCARTHY

John J. McCarthy, an individual and a noncarrier (“Applicant”), respectfully submits this Application under 49 U.S.C. § 14303 and Surface Transportation Board (“STB” or the “Board”) regulations at 49 C.F.R. Part 1182 (this “Application”) for approval of the transaction more fully described herein (the “Transaction”). The Transaction was completed on April 13, 2013; however, the parties to the Transaction, Applicant and Seller (defined below), were not aware until recently that the Transaction was subject to the jurisdiction of the Board. The result of the Transaction was the direct acquisition of control by Applicant of the regulated interstate passenger motor carrier, Trombly Motor Coach Service Inc., a Massachusetts corporation (“Trombly”), from Michael J. Trombly, an individual (“Seller”). As explained below, the portion of Trombly’s passenger transportation business that involves interstate passenger trips, and correspondingly requires interstate passenger motor carrier authority, is very small.

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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 an individual citizen of the United States of America, and currently resides in the state of Florida. Applicant is not a carrier. Applicant's business operations are headquartered at 55 Hampshire Road, Methuen, MA 01844.

B. Affiliate Regulated Carrier of Applicant. Prior to the closing of the Transaction, Applicant directly owned and controlled a single passenger motor carrier that held interstate passenger motor carrier authority in the United States, NRT Bus Inc. ("NRT"). NRT is a Massachusetts corporation, providing primarily non-regulated student home to school transportation services in the state of 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. A summary of the foregoing information regarding Applicant and NRT is included on Schedule A attached hereto. 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

C. Seller. All the issued and outstanding equity shares of Trombly were held by Seller, an individual U.S. citizen and resident of the commonwealth of Massachusetts, with his business headquartered at 16 Commercial Drive, Dracut, MA 01826. Seller had no direct or indirect control of any interstate passenger motor carrier other than Trombly.

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).

D. Trombly. Trombly is a Massachusetts corporation with its primary place of business at 16 Commercial Drive, Dracut, MA 01826. Trombly, similar to NRT, primarily provides non-regulated student home to school student transportation services in the state 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, and Trombly, has a “Satisfactory” USDOT Safety Rating. A summary of the foregoing information regarding Seller and Trombly is included on Schedule A. In providing its services, Trombly at the time of the Transaction utilized approximately 130 passenger vehicles (consisting of school buses and mini-buses) and 110 drivers.

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

The event triggering STB jurisdiction is the acquisition of all the issued and outstanding equity shares of Trombly by Applicant, the effect of which was to place Trombly 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.*, Trombly] 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 NRT and Trombly as described above, there are no other carriers with regulated interstate operations involved in this Application. The Transaction results in both NRT and Trombly being owned and controlled by Applicant.

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 NRT and Trombly 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 available to the public will be maintained and improved as operating efficiencies are realized. The services provided by Trombly have continued to be provided by Trombly under the same name used to provide such services prior to the Transaction. Trombly has and will continue to operate, but going forward, has been operated within the holdings of Applicant, an individual thoroughly experienced in school bus transportation operations.

The addition of Trombly to the holdings of Applicant is consistent with the practices within the passenger motor carrier industry of strong, well-managed transportation

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.

organizations adapting their ownership structure to operate several different passenger carriers within the same services markets. The Transaction will bring Trombly under the control of Applicant, who is experienced in the same service market served by both NRT and Trombly, namely, the non-regulated student home to school transportation market. The Transaction is expected to result in improved operating efficiencies and cost savings derived from economies of scale for each of Trombly and NRT in the hands of Applicant, all of which will help to ensure the continued provision of adequate service to the public.

B. Fixed Charges. Fixed charges are not contemplated to have a material impact on the Transaction.

C. Employee Interests. Applicant has continued the existing operations of Trombly and as such, the Transaction has not substantially impacted employees or labor conditions, with the exception of a limited number of back-office positions that were duplicative and thus phased out.

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 person or 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 marketplace currently served by Trombly is primarily the non-regulated home to school student transportation services in the state of Massachusetts, and limited charter services. Trombly competes directly with other providers of home to school transportation providers 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 NRT and Trombly) against the costs of providing the services internally.

School buses and vehicles utilized for student transportation have limited appeal for charter services, when compared to more comfortable motor coaches that charter companies

utilize, and the limited availability of the vehicles utilized in the daily school schedule. Thus, the charter services provided by both NRT and Trombly, using their school buses, do not constitute significant competition to charter companies. In addition, of the limited charter services that NRT and Trombly provide, only a very small portion of those trips are interstate. Considering the foregoing, 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 (49 C.F.R. § 1182.2(a)(8)).

The safety rating by the USDOT for each of NRT and Trombly is as set forth hereinabove and as set forth 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 he nor NRT is domiciled in Mexico, and that NRT is not owned or controlled by persons of that country.

B. Trombly. Seller certifies that Trombly 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. Subsequent Transaction Involving NRT and Trombly.

NRT and Trombly were involved in an additional transaction on September 30, 2019 (the "Subsequent Transaction"), whereby they were acquired from Applicant by Van Pool Group Transportation LLC ("Van Pool"). Neither Van Pool nor Applicant was at that time aware that the Subsequent Transaction was subject to the jurisdiction and approval of the Board. In that respect, Van Pool has simultaneously with the filing of this Application filed its application (*Van Pool Group Transportation LLC – Acquisition of Control – NRT Bus, Inc. and Trombly Motor Coach Service Inc.*; STB Docket No. MCF 21095) requesting the Board's approval of the Subsequent Transaction.

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.

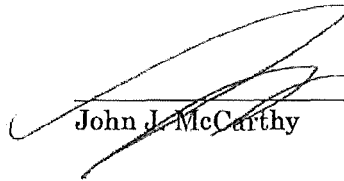
The verifications of Applicant and Seller are as follow:

[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 and NRT 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 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.

“Applicant”

Dated: April 30, 2021


John J. McCarthy

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 Trombly, 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



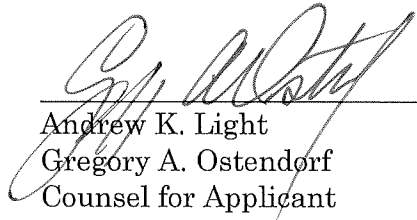
Michael J. Trombly

XV. Applicant Legal Counsel.

“Applicant”

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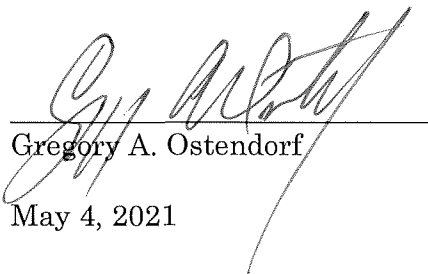
Respectfully,



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>
John J. McCarthy (Applicant)	None	None	None
NRT Bus Inc. (NRT)	1166825	MC-595581	Satisfactory
Michael J. Trombly (Seller)	None	None	None
Trombly Motor Coach Service Inc. (Trombly)	106905	MC-116313	Satisfactory