

SERVICE DATE – JUNE 3, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21094

JOHN J. MCCARTHY—ACQUISITION OF CONTROL—TROMBLY MOTOR COACH
SERVICE INC.

Docket No. MCF 21095

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

Docket No. MCF 21096¹

VAN POOL TRANSPORTATION LLC—ACQUISITION OF CONTROL—SALTER
TRANSPORTATION, INC.

Digest:² The Board is directing John J. McCarthy and Van Pool Transportation LLC to supplement their applications seeking authority after-the-fact to own and control motor passenger carriers.

Decided: June 3, 2021

On May 4, 2021, three applications were filed with the Board under 49 U.S.C. § 14303 seeking after-the-fact authority for three already-consummated transactions that ultimately resulted in the ownership and control of three motor passenger carriers by Van Pool Transportation LLC (Van Pool).

In Docket No. MCF 21094, John J. McCarthy (McCarthy), a noncarrier, seeks authority after-the-fact to acquire control of Trombly Motor Coach Service Inc. (Trombly Motor Coach) from Michael J. Trombly (Trombly), also a noncarrier. (Appl. 1, MCF 21094.) In this transaction, which was completed on April 13, 2013, Trombly transferred to McCarthy all issued and outstanding equity shares of Trombly Motor Coach. (Id. at 1, 3.) At the time, McCarthy also directly owned and controlled another interstate motor passenger carrier, NRT Bus Inc. (NRT). (Id. at 1-2.) Trombly Motor Coach and NRT both provide primarily non-regulated

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

student transportation services in Massachusetts, with occasional interstate charter services. (Id. at 2-3.)

In Docket No. MCF 21095, Van Pool, a Delaware limited liability company and a noncarrier, seeks authority after-the-fact to acquire control of Trombly Motor Coach and NRT from McCarthy. (Appl. 1, MCF 21095.) In this transaction, which was completed on September 30, 2019, McCarthy transferred all his ownership interest in Trombly Motor Coach and NRT to Van Pool. (Id. at 1, 4.) At the time of this transaction, Van Pool did not own or control another interstate motor passenger carrier. (Id. at 2.)

In Docket No. MCF 21096, Van Pool seeks authority after-the-fact to acquire control of another interstate motor passenger carrier, Salter Transportation, Inc. (Salter), from Stephen O. Gadd (Gadd), a noncarrier. (Appl. 1, MCF 21096.) Salter provides primarily non-regulated student transportation services in Massachusetts and New Hampshire, with occasional interstate charter services. (Id. at 4.) On June 12, 2020, Gadd transferred to Van Pool all issued and outstanding equity shares of Salter. (Id. at 1.) As a result, Van Pool directly owned and controlled three interstate motor passenger carriers: Trombly Motor Coach, NRT, and Salter. (Id.)

Pursuant to 49 U.S.C. § 14303 and the corresponding regulations at 49 C.F.R. part 1182, the transactions described above may be carried out only with the approval of the Board. Applicants are required to file an application that includes, among other things, a description of the proposed transaction, identification of any motor passenger carriers affiliated with the parties, a brief description of their operations, a summary of the intercorporate structure of the corporate family from top to bottom, and information to demonstrate that the proposed transaction is consistent with the public interest. See 49 C.F.R. § 1182.2.

In processing an application, the Board will review it for completeness. If the application is accepted as complete, a summary is published in the Federal Register within 30 days after the application is filed. Incomplete applications may be rejected; however, applicants are given an opportunity to correct minor errors or omissions, in which case the filing date of the application is deemed to be the date on which the complete information is filed. See 49 C.F.R. § 1182.4.

Here, the Board finds that the applications contain omissions that the applicants will be given the opportunity to correct. While the applications identify each of the categories of information required under 49 C.F.R. § 1182.2, the information provided is not substantial enough to provide the required notice to the Board and to the public as to the nature and consequences of the already-consummated transactions. Therefore, additional information is necessary for the applications to be considered complete.

First, the applications offer limited information regarding the relevant operations of the motor passenger carriers involved in each application. The scope of each motor passenger carrier's interstate operations is unclear, including the states in which the carriers operate. The characteristics of their vehicle fleets is also vague, specifically whether any of the carriers use or used vehicles other than school buses when providing interstate passenger services. Therefore, consistent with the requirement under 49 C.F.R. § 1182.2(a)(4) that the applicant provide the

Board with a description of the affiliated motor passenger carriers' operations, McCarthy and Van Pool will be directed to file supplemental information describing with more specificity the nature of each motor passenger carrier's operations both prior to the consummation of the transaction and currently.³

Second, the applications fail to offer any specifics regarding the competition for motor passenger carrier services in the geographic area serviced by the carriers. The applications also fail to indicate whether the motor passenger carriers involved in each transaction were competitors at the time of the transaction. Therefore, consistent with the requirement under 49 C.F.R. § 1182.2(a)(7) that the applicant provide the Board with information to demonstrate that the transaction is consistent with the public interest, McCarthy and Van Pool will be directed to file supplemental information describing with more specificity how each transaction impacted competitive conditions in the geographic markets in which Trombly Motor Coach, NRT, and Salter operated.⁴ McCarthy and Van Pool should also indicate whether and to what extent Trombly Motor Coach, NRT, and/or Salter competed with each other for business both before and after each transaction.

Third, the applications offer little information regarding the impact of the transactions on the interstate motor passenger carrier services provided to the public by the carrier that was acquired and almost no information regarding the impact of the transactions on the services provided by the carrier(s) already owned and controlled by the applicants. Because the transactions have been consummated, the impact of the acquisitions on the interstate motor passenger carrier services available to the public should be known, including the impact on the frequency and price of such services provided by each carrier. Therefore, consistent with the requirement under 49 C.F.R. § 1182.2(a)(7) that the applicant provide the Board with information to demonstrate that the transaction is consistent with the public interest, particularly the effect of the transaction on the adequacy of transportation to the public, McCarthy and Van Pool will be directed to file supplemental information describing with more specificity the level and type of interstate motor passenger carrier services provided to the public by Trombly Motor Coach, NRT, and/or Salter both before and after each transaction. This information should include a description of the impact that each transaction had, if any, on the price of those services.

Further, the Board seeks clarification regarding the number of buses owned by NRT and the number of personnel employed by NRT at the time of each transaction. In each of the three applications, the number of buses and drivers "used" by NRT is the same. Consistent with the

³ Because these applications for authority were filed after-the-fact, the effects of the transactions are known and can be quantified. Therefore, in furtherance of the Board's mandate to evaluate whether a transaction is consistent with the public interest, the applicants will be directed to provide information regarding the relevant facts and circumstances both prior to the transactions and currently.

⁴ See Acad. Express, L.L.C.—Acquis.—Go Bus LLC, MFC 21059, slip op. at 2 n.2 (STB served Aug. 20, 2014) (citing Appl. 9-10, Nat'l Express Acquis. Corp.—Control—Petermann Partners, Inc., MCF 21041 (Oct. 3, 2011); Appl. 5-7, Student Transp. of Am., Inc.—Control—Dairyland Buses, Inc., MCF 21042 (Nov. 14, 2011)).

requirement under 49 C.F.R. § 1182.2(a)(7) that the applicant provide the Board with information to demonstrate that the transaction is consistent with the public interest, including the effect of the transaction on the interests of carrier employees, McCarthy and Van Pool will be directed to provide the Board with the number of drivers employed by NRT and the number of buses owned by NRT at the time of each transaction. And if the number of drivers employed and buses owned by NRT differ from the number of buses and drivers “used” by NRT, McCarthy and Van Pool will be directed to provide an explanation of the difference.

Van Pool and McCarthy shall supplement their applications as discussed above by June 23, 2021.

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

It is ordered:

1. Van Pool and McCarthy are directed to file, by June 23, 2021, supplemental information as described in this decision.
2. This decision is effective on its service date.

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