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SERVICE DATE — AUGUST 6, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21096

VAN POOL TRANSPORTATION LLC—ACQUISITION OF CONTROL—SALTER
TRANSPORTATION, 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 Salter Transportation, Inc. (Salter), from Stephen O. Gadd (Seller). The Board is tentatively approving and granting after-the-fact authorization of the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

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 either 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.

SUPPLEMENTARY INFORMATION: According to the application,¹ Applicant is a Delaware limited liability company² that, prior to the transaction, owned and controlled two other

¹ The application initially was filed on May 4, 2021. On June 3, 2021, the Board issued a decision requiring Applicant to submit additional information in support of the application. Applicant filed an unverified supplement to its application on June 30, 2021, and a verification of 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).

² Further information about Applicant's corporate structure and ownership can be found in the Application. (See Appl. 5; id. at Ex. B.)

passenger motor carriers—NRT Bus, Inc. (NRT), and Trombly Motor Coach Service, Inc. (Trombly).³ (Appl. 2.) Prior to the transaction, Seller held all the issued and outstanding equity share of Salter. (*Id.* at 3.) On June 12, 2020, Seller transferred all his ownership interest in Salter to Applicant.⁴ (Appl. 1, 4.) Salter held, and continues to hold, interstate passenger motor carrier authority in the United States through the Federal Motor Carrier Safety Administrative (FMCSA). (*Id.* at 4.)

Applicant provides the following description of the three carriers:

- Salter primarily provides non-regulated student school bus transportation services within the North Shore area of Massachusetts and in southern New Hampshire, and it occasionally provides charter services when its buses are not in use for school activities. At the time of the transaction, Salter utilized a fleet of approximately 120 passenger vehicles, consisting of school buses and mini-buses, and it used approximately 150 drivers. Currently, Salter utilizes a fleet of approximately 137 passenger vehicles, consisting of school buses and mini-buses, and it uses approximately 103 drivers. (Suppl. Appl. 2.)
- 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 1,490 passenger vehicles, consisting of school buses, mini-buses, and passenger vans, and it used approximately 1,100 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. (*Id.* at 3-4.)
- 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 approximately 266 passenger

³ See Appl., May 4, 2021 Van Pool Transp. LLC—Acquis. of Control—NRT Bus, Inc., MCF 21095 (seeking after-the-fact approval of its acquisition of NRT and Trombly).

⁴ Applicant states it did not seek approval of the transaction before it was completed because neither Applicant nor 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)).

vehicles, consisting of school buses, mini-buses, and vans, and it uses approximately 142 drivers. (Id. at 4; Appl. 3.)⁵

As a result of the transaction, Applicant owned and controlled 100% of the equity shares of Salter. (Appl. 4.)

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 June 12, 2020, the services previously provided by Salter, NRT, and Trombly to the public have continued to be provided by them. (Suppl. Appl. 8.) Applicant represents that there have been no reductions in availability or scheduling of the charter services provided by Salter, NRT, or Trombly as a result of the transaction. (Id.)

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 Salter, NRT, and Trombly have continued to operate since the transaction. (Suppl. Appl. 8.) Applicant represents that the transportation services available to the public have been and will be maintained and possibly expanded. (Id.; Appl. 6.) Applicant further represents that it is experienced in the same market segments served by Salter—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. (Appl. 6; Suppl. Appl. 8.) Specifically, the transaction has allowed Salter, NRT, and Trombly to take advantage of increased purchasing power for such items as equipment, parts, fuel, and insurance. (Suppl. Appl. 8.) Thus, Applicant states, the transaction helped strengthen the financial position of all three 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. 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 supplement to the application. (See Suppl. Appl. 2-6, 9; id. at Corr. 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 Salter, NRT, and Trombly. (Suppl. Appl. 9.) According to Applicant, any reduction in the number of drivers used by the passenger motor carriers is the results of Salter's, NRT's, and Trombly's inability "to find, hire and retain additional qualified drivers," in part due to the COVID-19 pandemic. (Id.)

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, 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.