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SERVICE DATE — AUGUST 6, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21094

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

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: John J. McCarthy (Applicant), a noncarrier, has filed an application for authority after-the-fact to acquire control of Trombly Motor Coach Service Inc. (Trombly) from Michael J. Trombly (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 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 an individual who directly owned and controlled another passenger motor carrier, NRT Bus, Inc. (NRT), prior to the closing of the transaction. (Appl. 2.) NRT held and continues to hold interstate passenger motor carrier authority in the United States through the Federal Motor Carrier Safety Administration (FMCSA). (*Id.*) Under the transaction, which was completed on

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).

April 13, 2013, Seller transferred to Applicant all issued and outstanding equity shares of Trombly.² (Appl. 1, 3.)

Applicant provides the following description of the two carriers:

- 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 150 passenger vehicles, consisting of school buses and mini-buses, and it used approximately 160 drivers. Currently, Trombly utilizes a fleet of approximately 266 passenger vehicles, consisting of school buses, mini-buses, and passenger vans. It currently uses approximately 142 drivers. (Suppl. Appl. 3.)
- 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 1,350 passenger vehicles, consisting of school buses, mini-buses, and passenger vans, and it used approximately 1,400 drivers. Currently, NRT 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 2.)³

As a result of the transaction, Applicant owned and controlled two regulated interstate passenger motor carriers that operate in the same territory. (*Id.* at 2-3, 5-6.)

Applicant claims that the transaction has not had, and will not have, a material, adverse impact on the adequacy of transportation services available to the public. (*Id.* at 7.) Applicant states that the services provided by Trombly prior to the transaction have been provided by Trombly under the same name since the transaction, just under different ownership, and will continue to be provided by Trombly going forward. (Appl. 4.)

² Applicant states he did not seek approval of the transaction before it was completed because neither he 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. (Suppl. Appl. 1.) 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—Acquis. 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)).

³ 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. 2-3; *id.* at Ex. A.)

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).

Applicant asserts that the transportation services available to the public will be maintained and improved as operating efficiencies are realized as a result of the transaction. (Appl. 4.) Since the transaction, Trombly has continued to provide transportation services to the public under the same name. (Id.) Applicant represents that Trombly has continued to operate under the control of Applicant, who is “an individual thoroughly experienced in school bus transportation operations.” (Id.) Applicant also represents that there has been no reduction in the charter services provided by Trombly or NRT. (Suppl. Appl. 7.) He also states that the transaction resulted in improved operating efficiencies and cost savings derived from economies of scale for both Trombly and NRT. (Id.) Specifically, the transaction has allowed both NRT and Trombly to take advantage of increased purchasing power when acquiring new equipment, parts, fuel, and insurance. (Id.) These operating efficiencies and cost savings have helped the financial strength of both NRT and Trombly, allowing them to effectively compete in their respective geographic markets. (Id.)

Applicant states that fixed charges are not contemplated to have a material impact on the transaction. (Appl. 5.)

Moreover, Applicant asserts that the transaction did not have a substantial impact on employees or labor conditions because the operations of both Trombly and NRT have continued “substantially unchanged.” (Suppl. Appl. 7.) The transaction did result in a limited number of duplicative back-office positions, and those positions were phased out. (Appl. 5.) According to Applicant, any reduction in the number of drivers used by either company since the transaction is not the result of layoffs or reduction in the workforce at NRT or Trombly but rather the result of their 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, 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.