

# SHUMAKER

Shumaker, Loop & Kendrick, LLP

ROBERT NORRIS, ESQ.  
704.375-0057, EXT. 2926  
[rnorris@slk-law.com](mailto:rnorris@slk-law.com)

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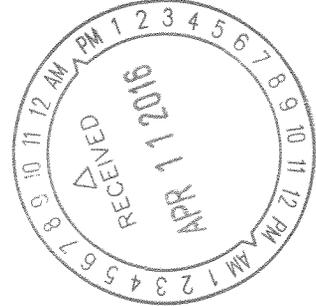
Bank of America Plaza 704.375.0057  
101 South Tryon Street 704.332.1197 fax  
Suite 2200  
Charlotte, North Carolina 28280-0002

[www.slk-law.com](http://www.slk-law.com)

April 5, 2016

**VIA FIRST CLASS MAIL**

Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E St S.W.  
Washington, D.C. 20423-0001



Re: *In the Matter of Rose Chauffeured Transportation, Ltd. Acquisition of Control of MY Bus Division of Cherry Consulting of the Carolinas, Inc.*  
STB Docket No. MCF 21006

Dear Sir or Madam:

Our law firm represents Rose Chauffeured Transportation, Ltd. ("Rose") and Rose Charters, LLC, ("RC") in the above referenced matter. Pursuant to 49 U.S.C. § 14303(a), Rose, RC, and Cherry Consulting of the Carolinas, Inc. ("Cherry") respectfully submit to the Surface Transportation Board an original and ten (10) copies of the enclosed Application for *nunc pro tunc* Approval of the Acquisition of Control by Rose of Cherry's MY Bus division, along with the \$2,100 filing fee.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

SHUMAKER, LOOP & KENDRICK, LLP

A handwritten signature in black ink, appearing to read "Robert Norris".

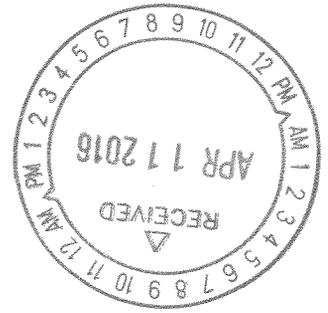
Robert Norris, Esq.

CC: Joshua M. Hayes, Esq. (via email)  
H.A. Thompson (via email)

Enclosures

FILED  
April, 11, 2016  
SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED  
April 11, 2016  
SURFACE  
TRANSPORTATION BOARD



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**IN THE MATTER OF  
ROSE CHAUFFEURED TRANSPORTATION, LTD.  
– ACQUISITION OF CONTROL –**

**MY BUS DIVISION OF CHERRY CONSULTING OF THE CAROLINAS, INC.  
STB DOCKET NO. MCF 21066**

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**APPLICATION UNDER 49 U.S.C. § 14303(a)  
FOR *NUNC PRO TUNC* APPROVAL OF THE ACQUISITION OF CONTROL  
BY ROSE CHAUFFEURED TRANSPORTATION, LTD. OF  
MY BUS DIVISION OF CHERRY CONSULTING OF THE CAROLINAS, INC.**

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Rose Chauffeured Transportation, Ltd., (“Rose”), a regulated interstate passenger motor carrier, respectfully submits this application under 49 U.S.C. § 14303 and Surface Transportation Board (“STB” or the “Board”) regulations 49 C.F.R. Part 1182 for *nunc pro tunc* approval of the transaction more fully described herein (the “Transaction”). The result of the Transaction was the direct acquisition of certain assets by Rose of Cherry Consulting of the Carolinas, Inc. d/b/a MY Bus, (“Cherry” or “Acquisition Carrier”), a regulated interstate passenger motor carrier.

Shumaker, Loop & Kendrick, LLP  
101 S. Tryon Street, Suite 2200  
Charlotte, NC 28280-0002

**I. Parties of the Transaction, Pertinent Operating Authorities, and USDOT Safety Fitness Ratings.**

**A. Buyer: Rose.** Rose is a passenger motor carrier that has provided chauffeur and charter bus transportation services in the states of North Carolina and South Carolina for the past twenty (20) years. It is a North Carolina corporation with its principal place of business located at 11325-A Nations Ford Road, Pineville, North Carolina 28134. It is privately held and owned and managed by its President, H.A. Thompson, a resident of North Carolina. Rose has a United States Department of Transportation (“USDOT”) Number # 697980, and Motor Carrier Number # 323248, and maintains a “Satisfactory” safety rating. For the twelve month period from August 1, 2014 through July 31, 2015, Rose and its affiliated companies, including those described below, had a gross operating revenue of approximately \$9,855,986.

**B. Affiliates of Rose: Rose Charters, LLC.** Rose Charters, LLC (“RC”) is a non-carrier holding company that was created for the purpose of receiving certain assets of the Acquisition Carrier subsequent to the consummation of the Transaction between Rose and the Acquisition Carrier. RC is a North Carolina limited liability company with a principal place of business at 11325-A Nations Ford Road Pineville, North Carolina 28134. RC is managed by its Manager, H.A. Thompson. RC does not have interstate carrier authority and does not have a USDOT Number or Safety rating. RC does not currently have any operating assets.

**C. The Acquisition Carrier: Cherry.** Cherry is a North Carolina corporation that provides consultation services related to the interstate and intrastate transportation industry. Prior to the Transaction, Cherry’s “MY Bus” division possessed certain operating assets related to providing passenger services to churches in and around the Charlotte, NC area. These assets included two (2) buses VIN numbers #1FDWE35L16DA72709 and #1GDE5V1E75F518184.

Cherry's MY Bus division also possessed a Department of Defense ("DOD") Identification Code, "MYAJ," which allowed it to bid on DOD contracts. Cherry has a USDOT Number # 822939, and MC Number #364041, and maintains a "Satisfactory" safety rating. For the twelve month period from August 1, 2014 through July 31, 2015, Cherry had a gross operating revenue of approximately \$261,346.62.

**D. Seller: Rebecca Cherry.** All of the issued and outstanding capital stock of the Acquisition Carrier is owned and held by Rebecca Cherry ("Seller"). The Seller does not have a direct or indirect ownership interest in any other interstate passenger motor carrier.

**E. Summary Table of Rose, RC, the Acquisition Carrier, and Seller.** Attached hereto as Schedule A is a summary table setting forth the USDOT Numbers, FMCSA Docket Numbers, and UDSOT Safety Ratings, as applicable, of Rose, RC, the Acquisition Carrier, and Seller.

## **II. Description of the Transaction.**

The event triggering STB jurisdiction was the acquisition of certain assets of the Acquisition Carrier by Rose pursuant to that certain Asset Purchase Agreement, dated July 21, 2015, by and between Rose, the Acquisition Carrier, and Seller (the "APA"). The APA provided that for the acquisition of:

two (2) buses, VIN numbers #1FDWE35L16DA72709 and #1GDE5V1E75F518184, DOT registration number, # 822939, MC registration number #364041, DOD Identification Code "MYAJ," Seller's contract rights, including all contracts for transportation services, Seller's name "MY Bus," and all other common law intellectual property rights related to the Business (assumed name certificate for "MY Bus"), Seller's current reservation commitments, Seller's email address ([info@mybusinc.com](mailto:info@mybusinc.com)) and website addresses and domains related to "MY Bus," and Seller's present telephone and fax numbers related to "MY Bus.

The APA provided that the Acquisition Carrier “will take all further and reasonable measures to secure, to the satisfaction of [Rose], the transfer and delivery of any required governmental or third party approvals, waivers, or consents, including but not limited to, the licenses and certifications from the U.S. Department of Transportation and the U.S. Department of Defense to the extent permitted by applicable law.” The purchase price for these assets was \$48,000.00. At the time of the Transaction, no parties were aware of STB jurisdiction over the Transaction.

The ultimate intent behind this Transaction was for Rose and RC to be able to bid on and perform contracts for the DOD. Prior to the consummation of the Transaction, the DOD’s Defense Travel Management Office, which is in charge of recording and maintaining these DOD certifications, informed Rose that it would not be issuing any additional DOD certifications for motor carriers because it lacked the funds to conduct the required due diligence to do so.

However, the DOD’s Defense Travel Management Office informed Rose that it would be able to purchase and receive an existing certification from a currently approved entity, such as the Acquisition Carrier. The DOD also informed Rose that each certification is “linked” to an existing USDOT registration number. However, USDOT registration numbers are not assignable or transferrable, which created a regulatory “Catch-22,” whereby the only way to obtain a new DOD certification was through a transfer, but said certification was “linked” to a non-transferrable USDOT registration number.

After executing the Transaction, Rose then contacted John McCormick, the Division Administrator for the Federal Motor Carrier Safety Administration (“FMCSA”) in North Carolina, to determine the best way to effectuate the transfer of the DOD certification. With Mr. McCormick’s assistance and input, Rose then made certain changes in the FMCSA’s SAFER system with respect to Cherry’s USDOT Number, #822939, including (1) changing the entity

name from Cherry to RC, (2) changing the name of the President of the company to H.A. Thompson, (3) changing the entity's address to RC's address, 11325 Nations Ford Rd, Pineville, NC 28134, and (4) changing the entity's EIN to RC's EIN. Rose then presented this information to the DOD in order to obtain the DOD certification.

The DOD performed a preliminary audit of Rose and RC in April 2015, and then a second audit in October 2015, approving and authorizing Rose and RC to bid on and accept DOD contracts. However, a review of DOD records showed that Rose and RC were operating under Cherry's USDOT Number # 822939. Rose then contacted with Ms. Maureen Rinehart at the DOD regarding this issue. Ms. Rinehart informed Rose that it would be able to transfer the acquired DOD certification to Rose's USDOT Number # 697980 by providing a written request to do so on official letterhead.

Rose then contacted Scott Mirelson and Jeff Secrist at the FMCSA in an attempt to address any compliance issues that may have arisen out of Rose's attempt to acquire the Acquisition Carrier's DOD certification. It was at that time that Mr. Mirelson raised the issue of STB jurisdiction over the Transaction.

Immediately after becoming aware of potential STB jurisdiction over the Transaction, Rose contacted Mike Higgins at the STB and performed independent research into the issue of STB jurisdiction. Rose concluded that, pursuant to 49 U.S.C.A. § 14303(a)(2), STB jurisdiction is invoked because (1) the Transaction involves "[a] purchase, lease, or contract to operate property of another carrier by any number of carriers," (2) both parties' aggregate gross operating revenues exceeded \$2,000,000 during the twelve (12) month period preceding the Transaction (49 U.S.C. § 140303(g)), and (3) due to the parties' proximity to the South Carolina border, both parties engaged in interstate commerce.

While Rose notes that there is STB authority providing that a mere purchase of assets does not confer jurisdiction, *see Refiners Transport & Term. Corp. -- Purchase -- Petroleum*, 39 M.C.C. 662, 663 (1944), Rose takes the position that, under the circumstances and scope of assets that Rose acquired in the Transaction, there is sufficient preservation of the identity of the Acquisition Carrier by Rose through the purchase of the Acquisition Carrier's name, intellectual property, phone numbers, website domains and emails addresses to invoke STB jurisdiction. *See, e.g., Yale Exp. System, Inc., Stock*, 90 M.C.C. 241, 244-45 (1962). Further, the APA expressly provides for the surrender of Cherry's interstate operating authority in exchange for consideration, which would invoke STB jurisdiction as well. *See Bekins Moving & Storage Co. - - Purchase -- Farrington*, 65 M.C.C. 56, 59-60 (1955). As a result, Rose would like to apply to the Board for *nunc pro tunc* approval of the Transaction.

### **III. Federally Regulated Carrier Affiliates.**

Other than Rose, RC, and the Acquisition Carrier described above, there are no other affiliated carriers with regulated interstate operations involved in this Application.

### **IV. Jurisdictional Statement – Revenues.**

The STB has jurisdiction over this matter pursuant to 49 U.S.C. § 140303(g), because the annual aggregate gross operating revenues of Rose, RC and the Acquisition Carrier exceed Two Million Dollars (\$2,000,000.00).

### **V. Environmental Impact.**

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.

### **VI. Public Interest Considerations.**

**A. Adequacy of Transportation Services.** The Transaction will not have a materially detrimental impact on the adequacy of transportation services available for the public. Indeed, Rose anticipates that services to the public will be improved. The Acquisition Carrier, despite possessing a DOD Identification number, had not actively bid on or received DOD contracts in the previous years prior to the Transaction. Conversely, Rose fully intends to actively bid on and perform DOD contracts, and, with the approval of the DOD, has bid on and performed several DOD contracts in late 2015 to the full satisfaction of all parties.

Further, although the Acquisition Carrier will continue to provide consultation services to motor carriers, it will no longer perform any transportation services because its sole operating assets, the two minibuses, were sold to Rose. Further, Rose has purchased the rights to the Acquisition Carrier's "MY Bus" name, intellectual property rights, email address, website addresses and domains related to "MY Bus" and the telephone and facsimile numbers related to "MY Bus."

The addition of the Acquisition Carrier's assets to Rose is consistent with the practices within the passenger motor carrier industry of responding to market demand for a particular niche, in this case, bidding on and performing DOD contracts. As a result of the Transaction, Rose will be able to bid on and perform DOD contracts that the Acquisition Carrier did not have the resources to perform. Additionally, the Transaction is expected to result in operating efficiencies and cost savings derived from economies of scale, all of which will help to ensure the provision of adequate transportation services to the public.

The Transaction will serve to enhance the viability and profitability of Rose and its affiliate, RC, and will therefore help assure the continued availability of adequate passenger transportation services to the military and civilians alike in North Carolina and South Carolina.

**B. Fixed Charges.** There are no fixed charges associated with the Transaction or the proposed acquisition of control thereunder.

**C. Employee Interests.** Cherry has not terminated the employment of any employees as a result of the Transaction, and as such the Transaction will not have substantial impacts on employees or labor conditions. Rose does not anticipate a measureable reduction in force or changes in compensation levels and/or benefits to its employees or the employees of its affiliates.

**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 (in this case, retroactively) an arrangement in which a carrier purchases property of another carrier. Rose contends that there will be no adverse impact on competition in the relevant market.

The Acquisition Carrier is a relatively small carrier that primarily provided consultation services to motor carriers and operated a largely intrastate point-to-point and special party passenger service to local churchgoers. Its interstate operations were solely the result of its location in Charlotte, North Carolina, being a few miles away from the South Carolina border, and the fact that several churchgoers in Charlotte lived over the state border in South Carolina. The Acquisition Carrier will continue its consulting operations post-Transaction, but has agreed to sell its "MY Bus" division assets to Rose.

Additionally, the Acquisition Carrier operated a small fleet of two minibuses and simply did not have the resources to perform many of the DOD contracts that were offered. Conversely, Rose possesses the resources to bid on and perform many DOD contracts that are offered in North Carolina and South Carolina, and can better utilize the DOD certification that the Acquisition Carrier and Rose agreed to transfer to Rose. Therefore, while this was a relatively

small Transaction, it has potential to have a large benefit to the military communities in North Carolina and South Carolina. In light of the foregoing, the adverse impact, if any, on the regulated motor carrier industry will be *de minimis*, and that neither competition nor the public interest will be adversely affected.

Lastly, Board approval of this Application will allow for the acquisition of certain assets of the Acquisition Carrier to be accomplished without the approval of state regulatory authorities, thus relieving the parties of the Transaction from potentially burdensome regulatory requirements. *See* U.S.C. § 14303(f) (providing that parties to approved transactions may effectuate such transaction and exercise control without the approval of any state authorities and exempts the parties to the transaction from the application of federal, state, and municipal law as necessary to allow them to carry out the transaction).

**VII. Insurance Certification.**

Each motor carrier that is subject to FMCSA insurance requirements and is involved in this Application now satisfies and, after Board approval, will continue to satisfy the 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 injury and property damage insurance coverage on file with the FMCSA.

**VIII. Mexico Certification.**

Rose certifies that neither it nor RC is domiciled in Mexico, nor are any of such entities owned or controlled by persons of that country. The Acquisition Carrier certifies that neither it nor any of its affiliated carriers is domiciled in Mexico, nor are they owned or controlled by persons of that country.

**IX. 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 retroactively authorize the Transaction as described herein.

**X. Verification.**

The Verifications of Rose and the Acquisition Carrier are as follows:

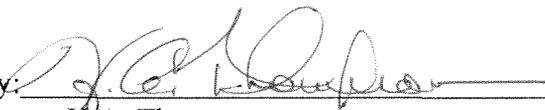
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**A. Verification of Rose.** The undersigned verifies under penalty of perjury under the laws of the United States of America, that all information supplied by such person on behalf of and limited to Rose and RC in connection with this Application is true and correct. Further, the undersigned is qualified and authorized on behalf of Rose 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/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.

**BUYER**

**Rose Chauffeured Transportation, Ltd.**

Dated: <sup>MARCH</sup> ~~January~~ 9, 2016

By:   
Name: H.A. Thompson  
Title: President

**B. Verification of Acquisition Carrier.** 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 the Acquisition Carrier in connection with this Application is true and correct. Further, the undersigned is qualified and authorized on behalf of the Acquisition Carrier 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/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.

**ACQUISITION CARRIER**

**Cherry Consulting of the Carolinas, Inc.**

**d/b/a ~~MY~~ Bus**

Dated: ~~January~~ March 9, 2016

By: Rebecca P. Cherry  
Name: Rebecca Cherry  
Title: PRESIDENT

**XI. Applicants' Legal Counsel**

Rose Chauffeured Transportation, Ltd.,  
Robert Norris, Esq.  
Shumaker, Loop & Kendrick, LLP  
101 S. Tryon Street, Suite 2200  
Charlotte, North Carolina 28280  
(705) 375-0057

Respectfully,

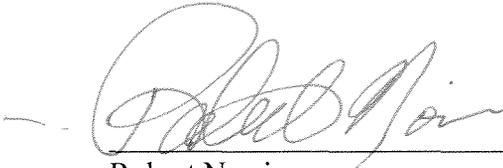
A handwritten signature in black ink, appearing to read "Robert Norris", written over a horizontal line.

Robert Norris, Esq.  
*Counsel for Rose Chauffeured Transportation, Ltd.,*

**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 First Class Mail, postage prepaid on all parties of record, and on the U.S. Department of Transportation, Chief Licensing and Insurance Division, 1200 New Jersey Avenue, S.E., Washington D.C. 20590; and the state regulatory agency for the states in which intrastate operations are affected.

This the 5 day of April, 2016.

  
\_\_\_\_\_  
Robert Norris

[Certificate of Service]

**Schedule A**

<b><u>Carrier</u></b>	<b><u>USDOT No.</u></b>	<b><u>FMCSA Docket No.</u></b>	<b><u>USDOT Safety Rating</u></b>
<b><u>The Buyer:</u></b>			
Rose Chauffeured Transportation, Ltd.	#697980	#323248	Satisfactory
<b><u>Rose Affiliates:</u></b>			
Rose Charters, LLC	None	None	None
<b><u>Acquisition Carrier:</u></b>			
Cherry Consulting of the Carolinas, Inc. d/b/a MY Bus	# 822939	#364041	Satisfactory