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SERVICE DATE – MAY 11, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21066

ROSE CHAUFFEURED TRANSPORTATION, LTD.—ACQUISITION OF CONTROL—MY
BUS DIVISION OF CHERRY CONSULTING OF THE CAROLINAS, INC.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On April 11, 2016, Rose Chauffeured Transportation, Ltd. (Rose), a noncarrier, filed an application under 49 U.S.C. § 14303 so that it can obtain approval for its acquisition of common control of the MY Bus division of Cherry Consulting of the Carolinas, Inc. (Cherry) pursuant to a July 21, 2015, Asset Purchase Agreement (APA) between the parties. The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 C.F.R. §§ 1182.5 and 1182.8.

DATES: Comments must be filed by June 27, 2016. Rose may file a reply by July 11, 2016. If no comments are filed by June 27, 2016, this notice shall be effective on June 28, 2016.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21066 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to Rose's representative: Robert Norris, Shumaker, Loop & Kendrick, LLP, 101 S. Treyon Street, Suite 2200, Charlotte, NC 28280.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet (202) 245-0368. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Rose, a North Carolina corporation, holds authority from the Federal Motor Carrier Safety Administration (FMCSA) as a motor carrier providing chauffeur and charter bus transportation services to the public in the states of North Carolina and South Carolina (MC-323248). Rose states that it is privately held and owned and managed by its president, H.A. Thompson, a resident of North Carolina. According to Rose, it created Rose Charters, LLC (RC), a non-carrier holding company, for the purpose of consummating the transaction between Rose and Cherry. Rose states that RC, which is managed by H.A. Thompson, does not have any operating assets or interstate motor carrier authority.

Rose further states that Cherry, a North Carolina corporation, provides consultation services related to interstate and intrastate transportation. According to Rose, Cherry's MY Bus

division owned two buses that it used to provide passenger services to churches in and around Charlotte, N.C. Rose states that the MY Bus division also possessed a Department of Defense (DOD) identification code, which allowed it to bid on DOD contracts. Cherry also holds authority from the FMCSA as a motor carrier (MC-364041). Rose states that, since entering into the APA, Cherry has ceased its activities as a motor carrier and, thus, does not compete with Rose.

Rose seeks Board authority for its acquisition of certain of Cherry's assets pursuant to the APA, which, as noted, was dated July 21, 2015.¹ Specifically, Rose states that it acquired: (1) two buses; (2) DOT registration number 822939; (3) FMCSA license MD-364041; (4) DOD identification code MYAJ; (5) the "MY Bus" name and all other common law intellectual property rights related to MY Bus; (6) the email address "info@mybusinc.com"; and (7) the website addresses, domains, telephone numbers, and fax numbers related to MY Bus.

Rose states that the purchase of assets only does not necessarily trigger Board jurisdiction, but it argues that the Board has jurisdiction here given that there is significant preservation of the identity of Cherry's MY Bus division. We agree. See Cowan Transp., Inc.—Purchase Exemption—Bowman Int'l Domestic Transp., Inc., Docket No. MCF 20144 et al. (ICC served Dec. 30, 1993) (agency authority exists where there is preservation of the corporate identity of the selling carrier coupled with the agreement that the selling carrier will cease competitive operations).²

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) the total fixed charges that result; and (3) the interest of affected carrier employees. Rose submitted information, as required by 49 C.F.R. § 1182.2, including information to demonstrate that the proposed

¹ Rose states that, at the time they entered into the APA, none of the parties were aware of the Board's jurisdiction over the transaction. Rose now seeks retroactive, or nunc pro tunc, approval of the transaction. The Board will tentatively approve and authorize the transaction, but only as of the date of service of this decision, and not retroactively. Absent any comments, this notice shall be effective on June 28, 2016.

² We also note that, according to Rose, Cherry "operated a largely intrastate point-to-point and special party passenger service to local churchgoers," but it also had interstate operations due to "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." (Appl. 8) See 49 U.S.C. § 13501 (the Board has jurisdiction "over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier . . . between a place in . . . a State and a place in another State.").

transaction is consistent with the public interest under 49 U.S.C. § 14303(b), and a statement that the aggregate gross operating revenues of Rose and Cherry exceeded \$2 million for the preceding 12-month period. See 49 U.S.C. § 14303(g).

Rose submits that the proposed transaction would have no significant impact on the adequacy of transportation services to the public. Rose states that it will be able to bid on and perform DOD contracts that Cherry did not have the resources to handle. In fact, Rose anticipates improved public service because Cherry had not bid on or received any DOD contracts in the years prior to the transaction, and Rose has bid on and performed several DOD contracts since the transaction “to the full satisfaction of all parties.” (Appl. 7.)

Rose asserts there are no fixed charges associated with the transaction or the proposed acquisition of control. Rose also states that it does not anticipate a measurable reduction in force or changes in compensation and benefits, and states that Cherry has not terminated any employees since the transaction was agreed upon in July 2015.

The Board finds that the acquisition described in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 C.F.R. § 1182.6(c). 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.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV”.

It is ordered:

1. The proposed transaction is approved and authorized, 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 June 28, 2016, unless opposing comments are filed by June 27, 2016.
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 the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: May 6, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.