



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 28<sup>th</sup> day of April, 2020

Application of

**AVATAR AIRLINES, INC.**

for a certificate of public convenience and necessity  
under 49 U.S.C. § 41102 to engage in interstate  
scheduled air transportation of persons, property, and  
mail

**Docket DOT-OST-2019-0164**

**ORDER DISMISSING APPLICATION**

On November 19, 2019, Avatar Airlines, Inc. (“Avatar”), filed an application in Docket DOT-OST-2019-0164 requesting that the U.S. Department of Transportation (the “Department”) issue it a certificate of public convenience and necessity authorizing it to engage in interstate scheduled air transportation of persons, property, and mail.

Section 41102 of Title 49 of the United States Code (the “Transportation Code”) directs us to determine whether companies proposing to engage in interstate scheduled air transportation are “fit, willing, and able” to perform such service, and to comply with the Transportation Code and the regulations and requirements of the Department. In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act’s liberal entry policy with Congress’ concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine an air carrier’s fitness are whether the applicant: (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have sufficient financial resources to commence the operations proposed without posing an undue risk to consumers, and (3) will comply with the Transportation Code and regulations imposed by Federal and State agencies. We must also determine that the applicant is a U.S. citizen.

Our review of the application revealed deficiencies in each area of fitness, most notably the lack of evidence that Avatar has sufficient capital to support its proposed operations, making the Department unable to issue a favorable fitness finding in this proceeding.<sup>1</sup> Avatar’s application did not include evidence of any existing funding available to the company or evidence that the company raised capital from a \$300 million private placement, which reportedly concluded on January 16, 2020.

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<sup>1</sup> Typically, the Department requires only that applicants show that they have access to sufficient financial resources to commence operations without posing an undue risk to consumers or their funds. However, during Avatar’s previous application proceeding, the Department advised the company, in Dismissal Order 2017-9-12, that should Avatar choose to refile its application, it must first complete its financing plans.

Information regarding an applicant's financing is critical to an applicant's fitness finding. Absent explicit evidence of adequate financing, there is no valid basis for the Department to continue to proceed with Avatar's application. Moreover, even if Avatar were to submit updated information about its finances, there remain a number of significant deficiencies in its application that must also be addressed. The Department expects an applicant for certificate authority to be prepared to fully prosecute its application at the time it is filed. While we are willing to work with applicants in the certification process, and where warranted, allow additional time to file information, it is administratively inefficient to allow deficient applications to remain pending. Processing and maintaining incomplete applications create delays in the Department's ability to process applications from companies that have prepared complete application filings and are reaching completion of the necessary steps to commence operations.

Considering the above, we have decided to dismiss Avatar's application filed in Docket DOT-OST-2019-0164. Although we are taking this action without prejudice to Avatar's ability to file for certificate authority in the future, before accepting any such application, we will require Avatar to provide third-party certification that it has completed its financing plans and actually has available to it the resources needed to be found fit.

**ACCORDINGLY**, Acting under authority assigned by the Department in its Regulations, 14 CFR 385.12:

1. We dismiss, without prejudice, the application filed by Avatar Airlines, Inc. in Docket DOT-OST-2019-0164, requesting a certificate of public convenience and necessity under 49 U.S.C. § 41102 to engage in interstate scheduled air transportation of persons, property, and mail.
2. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

This order shall become effective and become the final action of the Department of Transportation upon expiration of the above period unless within such period a petition for review is filed or the Department gives notice that it will review this order on its own motion.

By:

**TODD M. HOMAN**  
Director  
Office of Aviation Analysis

*An electronic version of this document is available at:  
<http://www.regulations.gov>*

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