

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, DC**

Joint Application of	)	
	)	
COMPASS AIRLINES, LLC and	)	
BREEZE AVIATION GROUP, INC.	)	Docket DOT-OST-2020-0106
	)	
For transfer of certificate authority under	)	
49 U.S.C. § 41105	)	
	)	

**ANSWER OF SUN COUNTRY AIRLINES**

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August 10, 2020

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**ANSWER OF SUN COUNTRY AIRLINES**

Sun Country, Inc. dba Sun Country Airlines (“Sun Country”) answers in opposition to the Joint Application of Compass Airlines, LLC (“Compass”) and Breeze Aviation Group, Inc. (“Breeze”) for the transfer of Compass’ certificate authority (“Joint Application” or “JA”). The Joint Application is premature and insufficiently supported to meet the Department’s requirements under 49 U.S.C. § 41105 and 14 C.F.R. Part 204.

**Background**

Breeze filed an application for a certificate of public convenience and necessity as a new entrant air carrier with the Department on February 7, 2020. See JA at 3 n.4. As a result of Compass’ cessation of operations in early April 2020, Breeze is now trying

shortcut the DOT and FAA new entrant certification processes by acquiring Compass' dormant DOT and FAA authorities and presenting itself as the successor to that carrier, which it is not. See JA at 4. Moreover, the Joint Application is premature and should be held in abeyance until Breeze fully complies with the Department's fitness requirements, including evidence to prove that it meets the Department's financial fitness test, which it has so far failed to do.

**I. The Department's Consideration Of The Joint Application Is Premature.**

The financial fitness test is one of the cornerstones of the Department's review of an applicant's fitness to hold certificate authority. Every applicant for new authority is required to demonstrate through third-party verifications that it has sufficient financial resources available to meet the Department's financial fitness test. In this case, Breeze claims that the financial fitness requirement is \$61.6 million (which we note is \$4 million dollars less than the amount claimed in its February Application). See JA, Exhibit 7. Even assuming for the sake of argument the accuracy of its financing plan, Breeze concedes that it remains \$25.4 million short of its financial fitness requirement and that additional funding will be required for it to meet the test. See id.

According to the Joint Application, Breeze plans to raise this additional funding through an equity financing involving another four investors. See id. However, Breeze acknowledges that those financings have not yet been completed, the funds have not

yet been received, and the “agreements are still being negotiated.” See id. Moreover, Breeze “expect[ed] the transaction will close in July”, and that, when the transaction closed, Breeze would submit (as it is required to) updated information to the Docket. See id. As of the date of this Answer, August 10, there has been no such update in the Docket. In sum, the ownership and capitalization structure is not set, and the financing upon which Breeze is relying to cover the remaining \$25.4 million of the financial fitness requirement has not been completed, much less the necessary funds received.

Indeed, the Joint Application provides a capitalization table showing a value of nearly \$24 million, but Breeze is expecting this additional equity financing round to raise approximately \$45 million through a common stock sale to approximately four investors. See JA at 6-7. This additional financing is not some de minimis amount, but rather, if successful, would dwarf the value in the capitalization table. It is therefore important to understand the details of these new significant owners, if any, to properly assess the Joint Application. The additional investor funding could potentially impact control, compliance, and U.S. citizenship issues. And, of course, if the equity financing does not occur, it will be important to understand what Breeze’s revised plan for funding the financial fitness requirement will be. Furthermore, as discussed in the following section, Breeze has understated the amount of money it will need to meet the Department’s financial fitness test.

Hence, the Joint Application is simply not ripe for Department consideration. The Department should hold in abeyance further consideration of the Joint Application unless and until:

- (1) that equity round, in fact, closes and confirmation is provided to the Docket;
- (2) Breeze supplements the Joint Application with details about those changes because the equity financing (or alternative funding plan, if the equity financing is not completed) could impact ownership, control, and even Breeze's citizenship;
- (3) interested parties have sufficient time to review the new information about the financing and the additional owners and submit comments; and
- (4) Breeze provides independent third-party verification that the funds are readily available.

**II. The Financial Fitness Requirement Does Not Reflect Twelve Months of Scheduled Passenger Service.**

The Joint Application seeks the transfer to Breeze of Compass' Certificate of Public Convenience and Necessity to engage in interstate ***scheduled*** air transportation. See JA at 2. Breeze's financial forecast for its first twelve months, however, does not represent twelve months of "normalized" ***scheduled*** operations. Instead, the Joint Application states that the first six months of Breeze's operations will be "exclusively" charter flights only, and the financial forecast confirms as much. See JA at 5, Exhibit T, and Exhibit T-3. Sun Country submits that the financial forecast and resulting financial fitness requirement should be based on twelve months of normalized ***scheduled*** passenger operations, which is the certificate authority at the core of the Joint

Application. By forecasting only six months of scheduled service, Breeze has effectively reduced its operating expenses and thereby reduced the amount of money required to calculate and meet the Department's fitness test requirement.

### III. The Proposed Start-Up Date Is Unrealistic.

Breeze states that it "anticipates" commencing service on October 15, 2020, slightly more than three months from the date it filed the Joint Application and two months after Answers are due. See JA at 3. While Sun Country appreciates that Department staff often work expeditiously on matters, this anticipated start date is completely unrealistic. This is effectively the application of a new entrant air carrier that is still awaiting equity financing to meet its financial fitness requirement. The Department's Guidance notes that "[i]n calculating start-up time, an applicant should anticipate that the Department will require a minimum of **four months** to process the application beginning from the time a complete application is filed."<sup>1</sup> Even in the context of a certificate transfer application, the same guidance notes that "[a]pplications for transfer of certificate authority should be filed jointly by the transferor and the transferee with the Department's Dockets Section **at least three months** in advance of the proposed effective date of the transfer" but also cautions that "[a]dditional time would

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<sup>1</sup> See Information Packet on How to Become a Certificated Air Carrier, DOT, at 8 (September 2012) (emphasis added).

be required if objections are filed or complex or unusual issues are raised by the application.”<sup>2</sup> Here, the three-month window is unrealistic, particularly since critically important information is still missing from the Joint Application (as detailed above) and DOT resources are being stretched and many are still working remotely as the global pandemic continues. Breeze’s attempt to jump the queue by presenting an unrealistic start-up date should not be countenanced. Breeze seeks to hedge its bets, and, as a result, has now burdened DOT staff with two pending certificate applications, a new entrant application filed in February (which it says it will not withdraw until this Joint Application is granted and effective certificate authority is received) and a premature certificate transfer application dated July 9. See JA at 3 n.4.

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<sup>2</sup> See id. at 28 (emphasis added).

**IV. Conclusion.**

Because the Joint Application is premature and insufficiently supported, the Department should hold in abeyance further consideration of the Joint Application until Breeze revises its calculation of the required DOT fitness test to embrace twelve months of normalized scheduled service and submits updated information and documents relating to the additional financing and demonstrating its ability to meet the Department's fitness requirements.

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Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Answer of Sun Country Airlines was served this August 10, 2020, via e-mail transmission on the following persons:

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