

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION**

Joint Application of

**COMPASS AIRLINES, LLC
and
BREEZE AVIATION GROUP, INC.**

**For the transfer of certificate authority under
49 U.S.C. §41105**

Docket DOT-OST-2020-0106

**ANSWER OF THE
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

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August 10, 2020

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The Air Line Pilots Association, International (ALPA) submits this Answer to the Joint Application of Compass and Breeze.^{1 2} The Joint Applicants request the transfer of Compass's certificate of public convenience and necessity to Breeze so that operations can be "resumed" under a new brand name. Breeze proposes to resume service using a new business model offering low cost, point-to-point service supported by an innovative technology platform.

ALPA does not oppose the proposed certificate transfer provided the Joint Applicants acknowledge and the Department approves the transfer as a successorship transaction recognizing the Compass Pilots' Collective Bargaining Agreement (CBA).³ ALPA opposes, however, approval of the transaction as a naked certificate transfer, which would be contrary to the public interest and federal aviation policy. ALPA's Compass pilots stand ready to assist Breeze in resuming operations under the respective DOT and FAA operating certificates. We

¹ Common names are used throughout.

² To the extent necessary, and for the reasons stated in ALPA's August 10, 2020 docketed comment, ALPA respectfully moves for leave to file its Answer on today's date.

³ Pursuant to Section 1 (D) of the CBA, "This Agreement shall be binding upon any successors, assigns, administrators and executors of the Company (a "Successor") unless and until changed in accordance with the provisions of the Railway Labor Act, as amended. For purposes of this paragraph, a Successor shall be defined as an entity which acquires all or substantially all of the equity and/or assets of the Company . . ."

recognize the unique challenges of relaunching operations in the age of Covid-19. In this case, the CBA provides an orderly means for Breeze to recall pilots in accordance with an established seniority list. Compass pilots are well-qualified (indeed, having previously flown the same aircraft type Breeze intends to operate) and are poised to assist Breeze in ramping up operations as demand recovers.

This is the second request by Breeze to secure a certificate of public interest and necessity. On February 7, 2020, Breeze filed a certificate application stating that “Breeze is a new entrant air carrier that plans to bring low-cost, nonstop services to mid- size markets . . .”⁴ In this docket, however, Breeze requests “expedited consideration in order that air transportation services under the Certificate can resume as quickly as possible.”⁵ Under the DOT’s public interest standard, and blackletter FAA regulation, operations may only properly “resume” under Compass’s transferred certificates if incident to the sale or transfer of the organization. This requires a successorship transaction and recognition of the Compass pilots’ CBA, not a naked ‘sale’ of the certificates.

By statute, certificates may only be transferred “when the Secretary of Transportation approves the transfer as being consistent with the public interest.” 49 U.S. Code § 41105 (a). In carrying out this mandate the Department must ensure that the transaction “encourage[s] fair wages and working conditions.” 49 U.S.C. 40101 (a)(5). Compass pilots are covered by a collective bargaining agreement governing such conditions, and Compass ceased operations just recently on April 5, 2020. It would contravene the DOT’s public interest mandate and undermine “fair wages and working conditions” -- particularly given the current economic crisis,

⁴ Docket OST-2020-0019 Application at 1.

⁵ Docket OST-2020-0106 Application at 3.

which is the subject of significant government investment in maintaining existing airline employment and working conditions in the CARES Act -- to permit the transfer of Compass's certificate of public convenience and necessity without providing for the employment of Compass pilots under the terms of their CBA.

The issuance of DOT and FAA certificates involve different rules and standards but are part of a unified certification process that is carefully coordinated between the sister agencies. The DOT applies a public interest standard and considers the economic "fitness" and U.S. citizenship of the recipient, whereas FAA applies a flight safety standard. Since the object of this transfer application is to achieve a fully operational carrier with both certificates, it would make no sense for the DOT to transfer a certificate that is impermissible under FAA requirements.

FAA policy and regulation could not be more clear. FAA operating certificates may only be transferred as incidental to a corporate merger or acquisition. As the FAA explained in a 2010 Legal Interpretation: "Air carrier certificates are not transferable. The FAA would not recognize an air carrier certificate transferred from one entity to another."⁶ Well-settled FAA regulations and policy provide that a "certificate issued under § 119.39 is not transferable" except if the transfer is "[i]ncident to [a] sale or transfer of the organization" holding the certificate.⁷

The FAA and DOT must reach a harmonious certification result. The conclusion here is simple: *either* (i) the acquisition of Compass by Breeze is a successorship transaction involving Compass's acquisition, in which case both certificates may be properly transferred; *or* (ii) it is a naked sale of the certificates, which would be contrary to the public interest and explicit FAA

⁶ Jobe, FAA Interpretation 2010-9.

⁷ FAA Order 8900.1 CHG 500, Volume 3, Chapter 34, Section 3, Paragraph 3- 3632(B)

policy and regulation, in which case a *de novo* certification process must be conducted by both agencies.

ALPA respectfully submits that a successorship transaction, involving the transfer of the certificates, together with assumption of the CBA could satisfy the standards for the transfer of both the DOT and FAA certificates. Although Compass's planes were leased, and there are few physical assets that are needed by Breeze, the transfer of the certificates, together with the employees that are needed to operate them would constitute substantially all of the remaining assets of Compass. As well put by Delta's Ed Bastian: "your employees . . . are the absolute best asset you have."⁸

Accordingly, ALPA does not oppose the certificate transfer subject to recognition by Breeze and the Department that it constitutes a successorship transaction with the continuation in effect of the Compass pilots' CBA.

Respectfully Submitted,



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⁸ New York Times (February 21, 2019).

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2020, the foregoing document was served on the following persons via the email addresses listed below in accordance with the Department's Rules of Practice:

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