

Order 98-5-21
Served May 19,1998



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

Issued by the Department of Transportation
on the 13th day of May, 1998

Application of

SERVANT AIR, 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 OST-97-3022

ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY

Summary

By this order, we tentatively conclude that Servant Air, Inc., is fit, willing, and able to provide interstate scheduled air transportation of persons, property, and mail as a certificated air carrier using small aircraft with no more than nine passenger seats.

Background

Section 41102 of Title 49 of the United States Code (Transportation) (“the statute”) directs us to determine whether applicants for certificate authority to provide interstate scheduled air transportation are fit, willing, and able to perform such transportation, and to comply with the statute 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 a company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to financial resources sufficient to commence operations without posing an undue risk to consumers, and (3) will comply with the statute and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen.

On October 16, 1997, Servant Air, Inc., filed an application in Docket OST-97-3022 for a certificate to provide interstate scheduled air transportation pursuant to 49 U.S.C. 41102. Servant Air accompanied its application with the information required by section 204.3 of our regulations.¹

We have received no answers to the application and no special issues regarding the applicant have come to our attention that would warrant oral hearing procedures. Under these circumstances, we propose to decide the issue of Servant Air's fitness to conduct scheduled passenger operations on the basis of the written record, and we tentatively conclude that Servant Air is a U.S. citizen and is fit, willing, and able to operate its proposed air service. However, we will give interested persons an opportunity to show cause why we should not adopt as final these tentative findings and conclusions.

FITNESS

The Company

Servant Air, an Alaskan corporation formed in March 1997, has not held any type of air transportation authority. Once certificated, Servant Air plans to commence its operations by providing scheduled passenger service three days per week over a Fairbanks-Central-Circle routing using one leased three-seat Cessna 172 aircraft.

Mr. Karl Braun, the President and founder of Servant Air, owns 100 percent of the carrier's voting stock.

Managerial Competence

Mr. Karl Braun, an Airline Transport Pilot, has been Servant Air's President since he founded the company in 1997. For the last two years, Mr. Braun has been serving as Director of Operations and Chief Pilot for Bellair. For the prior five years, he worked as a line pilot, flight instructor, aircraft mechanic, and station manager for Hageland Aviation Services, Larry's Flying Service, and Markair Express.

Mr. Michael Sullivan, an Airline Transport Pilot with 5,500 recorded flight hours, will serve as Servant Air's Director of Operations and Chief Pilot.² For the last year, Mr. Sullivan has been employed by West Coast Cargo as a captain. Prior to this, he served for a total of five years as a pilot, Director of Operations, Chief Pilot, and General Manager for Totem Air, Gulf Air Taxi, Wings of Alaska, Manokotak Airways, and Chrysler Air, respectively.

¹ Information supplementing Servant Air's application was filed on February 24, 1998.

² The FAA has advised us that it has given Servant Air a deviation from section 119.69(a) of the Federal Aviation Regulations to allow the carrier to combine the positions of Director of Operations and Chief Pilot.

Mr. Eddy L. McKenney, an Airframe and Powerplant Mechanic, will serve as Servant Air's Director of Maintenance. For the last two years, Mr. McKenney has been employed by Bellair as Director of Maintenance. For the nine years prior, he worked as an aviation maintenance mechanic and aircraft inspector for Hageland Aviation, Cobb Aviation, Al Morgan Crop Service, O'Brien Flying Service, ERA Aviation, Boeing Company, and Sowell Aircraft Services. Mr. McKenney also served in the United States Air Force for eight years.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Servant Air has demonstrated that it has the management skills and technical ability to conduct its limited proposed service.³

Financial Plan and Operating Proposal

Servant Air plans to commence its operations by providing scheduled passenger service three days per week over a Fairbanks-Central-Circle routing using one leased three-seat Cessna 172 aircraft.

Servant Air provided a detailed estimate of its expenses for the first year of its proposed operations. The company has indicated that its pre-operating expenses will total nearly \$9,000 and has estimated that it will incur \$55,420 in operating expenses for its first year of proposed operations. We have examined these estimates and find them to be reasonable. Based on our analysis of Servant Air's forecasts, it appears that the applicant will need access to resources of \$22,377 to meet the Department's financial fitness criteria.⁴

Servant Air has stated that its owner, Karl Braun, has pledged to financially support all of the company's operating costs. As evidence of Mr. Braun's financial ability to cover the cost of Servant Air's proposed operations, the company furnished a letter from Northern Schools Federal Credit Union verifying that Mr. Braun has \$23,434 on deposit as of January 22, 1998.

In light of the financial resources available to it, we tentatively conclude that Servant Air will have sufficient financial resources available to it to enable it to commence its proposed limited scheduled passenger operations without posing an undue risk to consumers or their

³ Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals.

⁴ In evaluating an applicant's financial fitness, the Department generally asks that the company have access to financial resources sufficient to cover all pre-operating expenses plus a working capital reserve equal to the operating expenses that would be incurred during three months of normal certificated operations. Because projected operations during the first several months of air transportation services frequently do not include all costs that will be incurred during a normal period of operations, it is our practice to base our three-month test on one-quarter of the first year's operating cost forecast. In calculating available resources, projected revenues may not be used.

funds. This tentative finding is, however, based on the company's plan to provide limited scheduled passenger operations using small aircraft. Nothing in the information provided to us indicates that Servant Air has the financial ability to conduct operations with large aircraft. Therefore, any authority which may be awarded Servant Air will contain a condition restricting the company to the operation of aircraft having nine passenger seats or less.

Compliance Disposition

The applicant stated that there have been no formal complaints filed or orders issued finding it, its owner, or its key personnel in violation of the statute; nor have any charges of unfair, deceptive or anticompetitive business practices, or of fraud, felony or antitrust violations been brought against them. Servant Air further stated that there are no actions or outstanding judgments filed against it, its owners, or its key personnel.

Our search of the Department's records found no compliance problems with Servant Air, its owners or key personnel. Further, the FAA has stated that Servant Air has applied for authority to operate under Part 135. Moreover, the FAA has stated that the company's proposed key technical personnel are properly qualified, and that the FAA knows of no reason why we should act unfavorably on Servant Air's application.

Based on these considerations, we tentatively conclude that Servant Air will have the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

CITIZENSHIP

Section 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section specifies that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

The applicant has provided an affidavit attesting that it is a U.S. citizen and has affirmed that its sole owner, Karl Braun, and all of its key personnel are U.S. citizens. Furthermore, there is nothing in the record that would lead us to conclude that control of Servant Air is not with citizens of the United States.

In view of the foregoing, we tentatively conclude that Servant Air is a citizen of the United States and is fit, willing, and able to provide the scheduled operations it proposes as a certificated air carrier.

OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses.⁵ We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Servant Air's fitness and certification and will issue a certificate that will contain an exact copy of the attached Terms, Conditions, and Limitations.

EFFECTIVE CERTIFICATE CONDITIONS AND LIMITATIONS

If Servant Air is found fit and issued the certificate it seeks, its certificate authority will not become effective until the company has fulfilled all of the requirements for effectiveness as set forth in the terms and conditions attached to its certificate. Among other things, this includes our receipt of evidence from the FAA that Servant Air has been certified to engage in the subject operations, that it has obtained liability insurance coverage meeting the requirements of Part 205 of our rules, and third-party verification that the company continues to have adequate funds to meet our financial fitness criteria.

Furthermore, we remind Servant Air of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that certificated air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness. Our tentative findings stated above are based on the operating plan described in Servant Air's application which utilizes small aircraft. These findings might no longer apply if the company were to substantially change the scope of its operations through the introduction of larger aircraft. Therefore, in the circumstances of this case, since the applicant has not provided any proposal to operate aircraft of ten passenger seats or more, any authority issued to Servant Air will be restricted to operations with small aircraft (nine passenger seats or less). Should Servant Air subsequently desire to operate larger aircraft, it must first be determined fit for such operations. Further, should Servant Air propose any other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.⁶ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).⁷

⁵ If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedures should be specified (*see* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

⁶ The carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required

Moreover, to aid the Department in monitoring the fitness of new carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report within 45 days following the end of the first year of actual flight operations to the Air Carrier Fitness Division. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,⁸ and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

under section 204.5. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority.

⁷ We also remind Servant Air about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the certificate authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume certificated operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

⁸ These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations and a twelve month income statement ending that same date.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and award a certificate to Servant Air, Inc., authorizing it to engage in interstate scheduled air transportation of persons, property, and mail using aircraft with no more than nine passenger seats, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the certificate award set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, S.W., Washington, D.C. 20590, in Docket OST-97-3022 and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.⁹
5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://dms dot.gov>*

⁹ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

Specimen



Terms, Conditions, and Limitations

SERVANT AIR, INC.

is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

- (1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:
 - (a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).
 - (b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.
 - (c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.
 - (d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for the operations proposed under this certificate, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder may not operate aircraft designed to have a maximum passenger capacity of more than nine seats. In the event that the holder wishes to institute operations with aircraft having a larger capacity, it must first be determined fit for such operations.

(4) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(5) The holder's authority is effective only to the extent that such operations are also authorized by the FAA.

(6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:

(a) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

(b) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by

section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(9) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(10) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

SERVICE LIST FOR
SERVANT AIR, INC.

Attachment A

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