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

Issued by the Department of Transportation  
on the 14th day of January, 2000

Application of

**ALLEGIANT 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

Served: January 20, 2000

Docket OST-99-6263 -3

**ORDER ISSUING CERTIFICATE AUTHORITY**

**Summary**

By this order, we find that Allegiant Air, Inc., is fit, willing, and able to provide interstate scheduled air transportation of persons, property, and mail as a certificated air carrier.

**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 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 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 September 24, 1999, Allegiant Air, Inc., filed an application in Docket OST-99-6263 for authority to provide interstate scheduled air transportation of persons, property, and mail pursuant to section 41102. Along with its application, Allegiant filed the information required by section 204.3 of our regulations for an examination of its fitness.<sup>1</sup>

Allegiant is an operating charter air carrier. The company, based in Fresno, was found fit initially in April 1998 (*see* Order 98-4-30) and received effective certificate authority on July 7, 1998 (*see* Order 98-7-17).<sup>2</sup> Since that time, the company has conducted charter operations consisting of ad hoc charters and a direct-sales public charter program with a total of three DC-9 aircraft. Initially, Allegiant's direct-sales charter program was offered over a Fresno-Las Vegas-South Lake Tahoe-Burbank routing six days per week and utilized a single 115-seat DC-9. In October and November 1999, Allegiant modified this program, dropping all service to South Lake Tahoe and adding service between Las Vegas and Long Beach (three round trips per day, six days per week) with a second of its three DC-9 aircraft. While Allegiant currently operates only three DC-9 aircraft, it has authority to operate up to four such aircraft. It expects that its fourth aircraft will be placed in service in February 2000. At that time, Allegiant intends to add the Long Beach-Salt Lake City market (three round trips per day, six days per week) to its direct-sales charter program.

If granted the certificate authority sought here, Allegiant intends to convert its direct-sale public charter program to scheduled service. In doing so, Allegiant has no plans to increase the level of overall service provided from that noted above.

As discussed in this order, the Department has carefully evaluated Allegiant's fitness to undertake the operations at issue. No special issues regarding the applicant have come to our attention, and Allegiant has not undergone any significant change in its ownership, management, overall financial condition, or compliance disposition since we completed our review of its fitness to conduct charter operations in July 1998. In light of these circumstances, we have decided that neither an oral evidentiary hearing nor a show-cause proceeding is necessary for us to make a decision in this case. Therefore, in accordance with section 302.29(b) of our regulations (14 CFR 302.29(b)), we will proceed directly to final approval of Allegiant's certificate application for interstate scheduled passenger authority. However, effectiveness of this authority will be conditioned upon our receipt of amended Operations Specifications from the Federal Aviation Administration (FAA) authorizing this service.<sup>3</sup>

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<sup>1</sup> Allegiant also incorporated by reference certain fitness-related information that it had previously filed with the Department. In addition, it filed information supplementing its application on December 10, 1999.

<sup>2</sup> Allegiant was found fit to conduct charter operations under the name WestJet Express Airlines. The company changed its name to Allegiant prior to receipt of effective certificate authority.

<sup>3</sup> Allegiant has already completed all of the steps required for amendment of its operations specifications to include domestic scheduled passenger authority. The FAA has indicated that these

### Managerial Competence

In Order 98-4-6, served April 10, 1998, the Department discussed the qualifications of the following individuals who continue to hold the noted positions with Allegiant:

Mitchell H. Allee---Chairman and Chief Executive Officer  
 James Patterson---President and General Manager  
 James O. Schmidt---Director of Operations  
 David D. Beadle---Chief Pilot  
 Robert G. Ferver---Director of Safety

Since that time, two members of Allegiant's key technical personnel team have changed. The qualifications of these individuals are discussed below.

Mr. Jack E. Fraser, an Airframe and Powerplant mechanic with over 13 years of aviation-related experience, has served as Allegiant's Chief Inspector since mid-1998. All of Mr. Fraser's experience was gained with WestAir Commuter/United Express. While with WestAir, he held increasingly responsible positions, beginning as a mechanic and progressing to serving for four years as WestAir's Director of Quality Control.

In June 1999, Mr. Kenneth W. Anderson assumed the position of Director of Maintenance for Allegiant.<sup>4</sup> Prior to that time, Mr. Anderson, an Airframe and Powerplant mechanic, worked for 12 years with various Part 121 air carriers, principally WestAir Commuter/United Express. At WestAir, Mr. Anderson served as Manager of Maintenance for four years, Manager of Planning for two years, and Vice President of Technical Services for four years.

The members of Allegiant's senior managerial and key technical personnel team are experienced in overseeing the carrier's charter operations. In addition, most of these individuals have held senior positions with air carriers conducting scheduled passenger operations.<sup>5</sup> Further, the FAA has reviewed the experience and background of Allegiant's key personnel and found them to be satisfactory to oversee the carrier's proposed scheduled passenger operations. Therefore, we conclude that the applicant has demonstrated that it has the management skills and technical ability to undertake its planned scheduled passenger operations.

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documents will be issued to Allegiant when it receives a section 41102 interstate scheduled passenger certificate.

<sup>4</sup> Mr. Anderson briefly served as Allegiant's Director of Maintenance in mid-1998. He left that position to work as Vice President of Maintenance for Great Lakes Aviation before rejoining Allegiant in June 1999.

<sup>5</sup> For example, as noted above and in Order 98-4-6, Messrs. Fraser, Anderson, Schmidt, and Beadle have extensive key technical/managerial experience with WestAir. In addition, Allegiant's President, Mr. Patterson, has previously served as President of WestAir.

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## Financial Plan and Operating Proposal

Upon receipt of effective scheduled passenger authority, Allegiant intends to convert its direct-sale public charter programs to scheduled service. In doing so, it will continue to operate a single round trip, six days per week between Fresno, Las Vegas, and Burbank; and three round trips, six days per week in the Long Beach-Las Vegas and Long Beach-Salt Lake City markets.<sup>6</sup>

Overall, Allegiant is in good financial condition. While its first year of operations produced losses totaling \$968,000, it continues to have both positive working capital and net equity.<sup>7</sup>

In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of normal certificated operations.<sup>8</sup> Because Allegiant has already completed all steps required for receipt of scheduled passenger operations specifications from the FAA, it will not incur any additional preoperating costs. Further, because it will be merely converting to scheduled service existing charter programs for which it already bears full advertising, reservations, and operating costs, Allegiant will not experience a substantial change in its operating expenses for these flights. Therefore, the carrier does not require any significant additional financial resources in order to undertake its planned scheduled passenger operations. Nonetheless, it has available to it a \$6.0 million line-of-credit to provide additional working capital if needed.<sup>9</sup>

In light of the above, we conclude that Allegiant will have sufficient financial resources available to it to enable it to commence its proposed scheduled passenger operations without posing an undue risk to consumers or their funds.

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<sup>6</sup> Allegiant is not yet operating in the Long Beach-Salt Lake City market. The company intends to commence its charter program in this market on or about February 1, 2000.

<sup>7</sup> As of July 31, 1999, Allegiant had current assets of \$1.6 million, current liabilities of \$1.0 million, positive working capital of \$591,000, a current assets to current liabilities ratio of 1.57:1, and positive stockholder's equity of \$2.0 million.

<sup>8</sup> Because projected operations during one or more of the first several months of anticipated actual air transportation services frequently do not include all costs of operations 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.

<sup>9</sup> This line-of-credit has been extended to Allegiant by its sole owner, Mr. Allee. Morgan Stanley Dean Witter supplied third-party verification of Mr. Allee's ability to supply the funds committed. Allegiant forecasts that its total operating expenses for both charter and scheduled service during the next year will total \$25.8 million. Therefore, the line-of-credit available is sufficient to provide a three-month working capital reserve for almost all of Allegiant's operations, both charter and scheduled.

## Compliance Disposition

We also conclude that Allegiant has the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed. As noted in Order 98-4-6, Allegiant had no actions or outstanding judgments against it, its owner, or its key personnel, nor had there been any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations brought against any of these parties in the past ten years. Further, there were no pending investigations, enforcement actions, or formal complaints filed by the Department against it, its key personnel, or persons having a substantial interest in it with respect to compliance with the statute or the Department's regulations.

Since that time, no changes have occurred with respect to compliance matters related to Allegiant, its owners, or its key personnel.<sup>10</sup> Further, our search of the Department's records found no compliance problems with any of these parties. In addition, the FAA has advised us that the company has completed the steps required for receipt of amended Operations Specifications to conduct scheduled passenger operations, that Allegiant's charter operations have been conducted satisfactorily, and that it knows of no reason why we should act unfavorably on the company's current application.

## 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 requires 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.

Allegiant has provided an affidavit attesting that it is a citizen of the United States within the meaning of the statute and that it is actually controlled by U.S. citizens. Moreover, the company continues to be wholly owned by Mr. Mitchell Allee, a U.S. citizen, and all of its officers are also U.S. citizens. We have previously found the applicant to meet the citizenship requirements of section 41102 under Mr. Allee's ownership and control.

Based on the above, we conclude that Allegiant is a citizen of the United States and is fit, willing, and able to conduct the interstate scheduled passenger operations proposed in its application.

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<sup>10</sup> During its first year of operations, Allegiant had one enforcement investigation case opened against it by the FAA. That case, alleging a security-related violation, was closed with a warning letter. In addition, Allegiant has not had any accidents or incidents since commencing operations.

## CERTIFICATE CONDITIONS & LIMITATIONS

The scheduled passenger authority being awarded to Allegiant by this order will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to this certificate. Among other things, this includes our receipt of evidence that Allegiant has been issued amended Operations Specifications by the FAA, which authorize it to engage in scheduled passenger operations.

Furthermore, we remind Allegiant 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.

As noted earlier, Allegiant is currently limited to operations with no more than four aircraft. Our findings herein are based on the scheduled service plan presented and Allegiant's stated operating plans (charter and scheduled) for its next year of operations. As presented, these plans do not include the operation of more than the four aircraft currently authorized. Therefore, we will continue to require that Allegiant notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to implementing service with more than 4 aircraft. Furthermore, should Allegiant propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.<sup>11</sup> The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).<sup>12</sup>

### ACCORDINGLY,

1. We find that Allegiant Air, Inc., is fit, willing, and able to engage in interstate scheduled air transportation of persons, property, and mail.

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<sup>11</sup> In addition, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. Allegiant may contact our Air Carrier Fitness Division to report proposed substantial changes and to determine what additional information, if any, will be required 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.

<sup>12</sup> We also remind Allegiant about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) if the company ceases all operations for which it was found fit, it may not resume such operations unless its fitness has been redetermined; and (2) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

2. We issue a certificate of public convenience and necessity to Allegiant Air, Inc., to engage in interstate air transportation in the form and subject to the Terms, Conditions, and Limitations attached.
3. Should Allegiant, Inc., propose to operate more than 4 aircraft, we direct it to notify the Department in writing at least 45 days prior to the proposed operation and demonstrate its fitness to conduct such operations before their commencement.
4. We will serve a copy of this order on the persons listed in Attachment A.

By:

**A. BRADLEY MIMS**  
Deputy 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>*

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**Certificate of Public Convenience and Necessity  
for  
Interstate Air Transportation**

*This Certifies That*

**ALLEGIANT AIR, INC.**

*is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate air transportation of persons, property, and mail.*

*This Certificate is not transferable without the approval of the Department of Transportation.*

*By Direction of the Secretary*

*Issued by Order 2000-1-14  
On January 14, 2000  
Effective on (see attached)*

*A. Bradley Mims  
Deputy Assistant Secretary for  
Aviation and International Affairs*



*Terms, Conditions, and Limitations*

**ALLEGiant 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 amended Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).*

*(b) 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 Order in this case.*

*(c) 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 scheduled operations.*

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

*(3) 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.*

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

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

(6) *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.*

(7) *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.*

(8) *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.*

(9) *In the event that the holder ceases the operations for which it was found "fit, willing, and able," its authority under all certificates held 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 ALLEGIANT AIR, INC.**

Attachment A

AARON A GOERLICH  
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