

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Application of	:	
	:	
VIRGIN AMERICA INC.	:	OST-2005-23307
	:	
for a certificate of public conveni-	:	
ence and necessity under 49 USC 41102	:	
to engage in interstate air transpor-	:	
tation	:	

**ANSWER OF AMERICAN AIRLINES, INC. TO NEW
EVIDENTIARY MATERIAL OF VIRGIN AMERICA INC.**

American Airlines, Inc., pursuant to the Department's Notice of February 20, 2007 in this docket, hereby answers the new evidentiary material submitted on February 14, 2007 by Virgin America. The new material is but the latest in a continuous stream of pleadings and amendments by Virgin America attempting to dress up its bid to become a U.S. air carrier. Like the applicant's many prior efforts, this material does nothing to change the Department's conclusion in show-cause Order 2006-12-23, December 27, 2006, that Virgin America is not a "citizen of the United States" under 49 USC 40102(a)(15).

**I. THE PROPOSED \$10 MILLION IN ADDITIONAL EQUITY INVESTMENT BY
CYRUS CAPITAL AND BLACK CANYON**

REDACTED

Virgin America claims that "U.S. investors have made an additional equity investment of \$10 million in Virgin America" (p. 2).¹ However, as the Department concluded in Order 2006-12-23, Cyrus Capital and Black Canyon - the alleged U.S. citizen investors in Virgin America - are themselves foreign citizens (p. 15). Thus, the last-ditch proposal by these two entities to provide additional equity funding to Virgin America is irrelevant. No amount of additional equity investment by non-U.S. citizens can change the Department's sound conclusion that Virgin America is not a U.S. citizen.

Virgin America asserts that "[t]his additional equity will not be subject to the put agreement previously agreed by the parties" (p. 2), and that the new investment "is not subject to any guarantee" (VX news release, February 14, 2007). Such statements are highly misleading when the terms and conditions in the underlying documents are reviewed.

¹Virgin America's pleading incorrectly states that Cyrus Capital and Black Canyon "have made" an additional investment, when in fact such an investment has merely been proposed.

While the \$10 million equity investment from parties that the Department has already deemed to be non-U.S. citizens may not be subject to a put agreement,

REDACTED

The proposed \$10 million investment

REDACTED

REDACTED

II. CYRUS CAPITAL'S PROPOSED \$20 MILLION LOAN **REDACTED**

In its motion, Virgin America claims to have "obtained a new \$20 million loan from Cyrus Capital" (p. 2).³ Not mentioned in the motion, however, is that one of the loan's closing conditions is that Virgin America must

REDACTED

Far from improving Virgin America's financial underpinnings, the terms and conditions of this supposed new loan serve to demonstrate yet again the on-going deficiencies in Virgin America's capital structure.

In American's answer of February 13, we showed that Virgin America would face a cash deficit of at least \$46 million at the Second Closing (p. 13). By proposing at this late date to take on further debt of \$20 million, Virgin America is admitting the insufficiency of its financial plan.

REDACTED

³Virgin America's pleading misstates the facts by asserting that the applicant has "obtained" a new \$20 million loan. To the contrary, such a loan is merely proposed, and as we show is

REDACTED

REDACTED

The notion of a new \$20 million loan
REDACTED

raises far more questions than it answers. The proposal lends no support for the Department to find that Virgin America is a U.S. citizen, or for that matter that the applicant is financially fit.

III. VIRGIN AMERICA'S CONTINUED RESHUFFLING OF DIRECTORS DOES NOTHING TO CHANGE THE FACT THAT VIRGIN AMERICA IS NOT A U.S. CITIZEN

Virgin America has continued to shuffle and reshuffle its board of directors. These actions are not only window dressing, but highlight the continuous presence of the Virgin Group's same three initial appointees from the very outset. In December 2005, the original seven-member board consisted of four U.S. citizens (Mssrs. Lanigan, Hooks, Singer and Nisi), two of whom have since been replaced, and three non-U.S. citizens, all of whom remain (Ms. Farrow and Mr. Murphy, U.K. citizens and high-level Virgin Group insiders, and Mr. Reid, a non-U.S. citizen for these purposes since he was appointed by the Virgin Group).

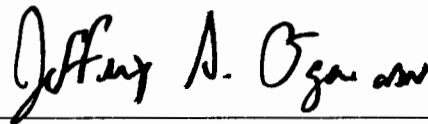
Virgin America has shuffled its board three times in less than a year. In March 2006, the board grew from seven to 10 members (with the addition of Mssrs. Carty, Mehta, and Whelan). Four months later, Mr. Singer was replaced by Mr. Freidheim (both U.S. citizens) and Mr. Whelan was replaced by Mr. Peachey (both U.K. citizens and Virgin Group insiders). In the most recent shuffle, Mr. Hooks was replaced by Mr. Skinner, and the board was re-configured with eight rather than nine voting members. While the Virgin Group has offered to reduce its voting strength from three to two, it has not said which of its three current voting directors (each a Virgin Group insider) would leave the board.

None of these actions has remedied Virgin America's non-U.S. citizenship. The material facts relied on by the Department in Order 2006-12-23 that Virgin America is not owned and controlled by U.S. citizens remain true today. While Virgin America's board composition has been a game of musical chairs, that is evidence of the instability of the applicant's management - not of any change in its ownership and control.

CONCLUSION

Notwithstanding Virgin America's latest effort, it remains a non-U.S. citizen. Virgin America continues to fail the statutory numerical test that at least 75% of its equity must be owned by U.S. citizens, and Virgin America continues to be under the actual control of Sir Richard Branson and the Virgin Group based on the totality of the circumstances. Accordingly, Order 2006-12-23 should be made final, and Virgin America's application for a certificate of public convenience and necessity should be denied.

Respectfully submitted,



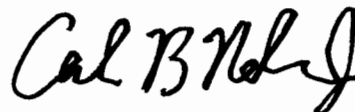
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March 1, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by email on the following persons:

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March 1, 2007