

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

SERVED MAY 7, 1996

Issued by the Department of Transportation
on the 27th day of March, 1996

Application of

CHEROKEE AIR, LTD.

for a foreign air carrier permit under 49 U.S.C.
section 41301

Docket 49103

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

Summary

In this order we are issuing Cherokee Air, Ltd., a foreign air carrier of the Bahamas, a foreign air carrier permit under section 41301 of Title 49 of the U.S. Code, to perform charter foreign air transportation between the Commonwealth of the Bahamas (the Bahamas) and Florida.

Application

By application filed August 31, 1993, Cherokee Air seeks an initial foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between the Bahamas and Florida.

No answers were filed in response to Cherokee Air's permit application.

Decision

We have reviewed the record and have decided to issue Cherokee Air a foreign air carrier permit using the simplified Subpart Q procedures.¹ We will issue this permit for a period of five years.² The public was informed of the application by notice in the Federal

¹ 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

Register and the Department's published weekly list of applications filed.³ The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case, because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Cherokee Air is qualified to conduct the proposed operations.

Public Interest Considerations

Charter operations between the United States and the Bahamas are based on comity and reciprocity. We have no reason to believe that the Government of the Bahamas would act unfavorably on a U.S. carrier request to conduct charter operations in the U.S.-Bahamas market. Moreover, a number of U.S. carriers provide various scheduled services between the United States and the Bahamas.⁴ Therefore, we find that adequate comity and reciprocity and our overall aviation relationship with the Bahamas support favorable action on Cherokee Air's application.

Operational and Financial Fitness

We find that Cherokee Air is operationally and financially fit to conduct the operations at issue here. Cherokee Air has been conducting passenger charter operations to and from the United States since 1990, has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five years. Cherokee Air holds effective authority from its homeland to conduct the proposed operations. The FAA's Air Transportation Division (AFS-200) has advised us that it knows of no reason why Cherokee Air's request for a foreign air carrier permit should not be approved.⁵ Finally, Cherokee Air has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds.

Ownership and Control

We find that Cherokee Air is a privately held Bahamian corporation, substantially owned and effectively controlled by citizens of the Bahamas.⁶

² Consistent with our usual practice where our aviation relations are not covered by a bilateral aviation agreement, we are limiting the term of Cherokee Air's authority to five years to afford us the opportunity to review our reciprocity and comity findings.

³ 58 FR 48411, September 15, 1993.

⁴ See Official Airline Guide, North American Edition, January 1996.

⁵ A copy of the FAA's September 13, 1995, memorandum has been placed in Docket 49103.

⁶ Faron S. and Esther B. Sawyer, Bahamian citizens, are the sole owners of Cherokee Air.

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue Cherokee Air a foreign air carrier permit in the form attached;
2. Cherokee Air is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a “major regulatory action” under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a)(1) of our Regulations;⁷ and
5. The public interest does not require an oral evidentiary hearing on the application.

ACCORDINGLY,

1. We issue, in the form attached, a foreign air carrier permit to Cherokee Air, Ltd. authorizing it to engage in charter foreign air transportation of persons, property and mail between any point or points in the Bahamas and any point or points in Florida;
2. The exercise of the privileges granted above are subject to Cherokee Air’s compliance with the conditions listed in Attachment A;
3. To the extent not granted, we deny all requests for relief in Docket 49103;
4. Unless disapproved by the President of the United States under section 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department’s order under that section, which ever occurs earlier;⁸ and

⁷ This finding is based on the fact that the grant of this permit will not result in a near-term increase in fuel consumption in excess of 10 million gallons.

⁸ This order was submitted for section 41307 review on March 27, 1996. On May 6, 1996 we received notification that the President’s designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department’s order.

5. We will serve a copy of this order on Cherokee Air ; the Ambassador of the Commonwealth of the Bahamas in the United States; the Department of State (Office of Aviation Negotiations) and the Federal Aviation Administration (Miami-IFO).

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://www.dot.gov/dotinfo/general/orders/aviation.html>*

SUMMARY
FOREIGN AIR CARRIER PERMIT APPLICATION
Docket 49103

Cherokee Air, Ltd.

Flag: the Bahamas

Federal Register Notice: 58 FR 48411, September 15, 1993.

Filing Date: August 31, 1993

Authority Sought: Initial foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between the Bahamas and Florida.

Pleadings: No answers were filed in response to Cherokee Air's application.

Public Interest: Charter operations between the United States and the Bahamas are based on comity and reciprocity. We have no reason to believe that the Government of the Bahamas would act unfavorably on a U.S. carrier request to conduct charter operations in the U.S.-Bahamas market. Moreover, a number of U.S. carriers provide various scheduled services between the United States and the Bahamas. Therefore, we find that adequate comity and reciprocity and our overall aviation relationship with the Bahamas support favorable action on Cherokee Air's application.

Fitness: Cherokee Air has been in continuous operation since February 1987, and has provided charter services between the Bahamas and the United States since 1990 (see Order 90-11-28). Cherokee Air's current exemption authority was granted June 15, 1995 for one year (see Order 95-7-26, Docket 49268). Cherokee Air holds appropriate licenses from its government and has had no safety violations or fatal accidents in the last five years. Cherokee Air has experienced management and appears financially sound:

Financial Indicators

(\$ millions)

year ending December 31	<u>1994</u>	<u>1993</u>
Total Assets	.50	.48
Total Liabilities	.10	.13
Owner's Equity	.40	.35
Operating Profit or (Loss)	(.02)	.07

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

Ownership and Control: Cherokee Air is substantially owned and effectively controlled by two citizens of the Bahamas.

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PERMIT TO FOREIGN AIR CARRIER

Cherokee Air, Ltd.

A Flag Carrier of the Bahamas

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code, and the orders, rules, and regulations of the Department of Transportation, to engage in charter foreign air transportation of persons, property and mail as follows:

Between any point or points in the Bahamas and any point or points in Florida.

The holder shall also be authorized to engage in other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached, and to the following:

1. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.
2. This permit shall be subject to the condition that in the event any practice develops which the Department of Transportation regards as inimical to fair competition, the holder and the Department of Transportation will consult and will use their best efforts to agree upon modifications satisfactory to the Department of Transportation and the holder.

This permit shall be effective on **May 6, 1996**, and shall terminate five years thereafter. However, this permit shall terminate upon the dissolution or liquidation of the holder to which it was issued. Authority under this permit shall be subject to termination

at any time if the authority to conduct flight operations to and from the holder's homeland to any U.S. carrier authorized by the United States is denied, canceled, or unreasonably restricted; provided, however, that if during the period this permit is effective, the operation of the foreign air transportation authorized become the subject of any treaty, convention, or agreement to which the United States and the holder's homeland are or shall become parties, this permit shall continue in effect during the period provided in such treaty, convention, or agreement.

The Department of Transportation has executed this permit and affixed its seal on **May 7, 1996**.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
 - (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
 - (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Department's Regulatory Analysis Division, X-57, Office of Aviation Analysis (any changes to, or termination of, insurance also shall be filed with that office);
 - (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
 - (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
 - (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
 - (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.
- In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
 - (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
 - (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
 - (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

(41301/40109) 7/94

