



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC**

Issued by the Department of Transportation  
on the 23<sup>rd</sup> day of September, 1997

Fitness determination of

**AUSTIN EXPRESS, INC.**

as a commuter air carrier under 49 U.S.C. 41738

**ORDER TO SHOW CAUSE**

**Summary**

By this order, we tentatively conclude that Austin Express, Inc., is a citizen of the United States, and is fit, willing, and able to provide scheduled air transportation as a commuter air carrier.

**Background**

On August 19, 1997, Austin Express, a newly formed Texas corporation, filed an application for commuter air carrier authority. It accompanied its application with the information required by section 204.3 of our regulations for an examination of its fitness.<sup>1</sup>

Section 41738 of Title 49 of the United States Code ("the Statute") and section 298.21(d) of the Department's regulations (14 CFR 298.21(d)) direct us to determine whether companies proposing to provide scheduled passenger service as commuter air carriers are "fit, willing, and able to perform such service," and to ensure that all operations relating to this service conform to the safety standards established by the Federal Aviation Administration (FAA).<sup>2</sup> In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's

---

<sup>1</sup> On August 26 and 27, 1997, Austin Express supplemented its application with information on personnel, operating plans, and financial resources.

<sup>2</sup> Part 204 of our rules sets forth the evidence we need to make fitness findings.

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 carrier's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) has access to financial resources which are sufficient to commence operations without posing an undue risk to consumers, and (3) will comply with the Act and regulations imposed by federal and state agencies. We must also determine that an applicant is a U.S. citizen.

Based upon our review of Austin Express's application and the safety and compliance information on the applicant received from the FAA and NTSB, we tentatively conclude that Austin Express is a U.S. citizen and has met the fitness test to conduct commuter operations. We will, however, give interested persons an opportunity to show cause why we should not adopt as final our tentative determination that Austin Express is fit, willing, and able to provide commuter service.

## **The Company**

Austin Express was founded in Texas on August 13, 1997, by the ten members of its management team, who own 100 percent of its stock.<sup>3</sup> The company has filed a Commuter Air Carrier Registration Form (OST Form 4507) under 14 CFR Part 298 and has applied for an FAA Air Carrier Certificate and Operations Specifications under Part 121 for the authorization of scheduled passenger operations.

If Austin Express is found fit to conduct scheduled service, it plans initially to operate four 19-seat Metro III aircraft between its base in Austin and the Texas cities of Beaumont/Port Arthur, Corpus Christi, and Tyler. Planned expansion in the first year would include the addition of two 30-seat EMB-120 aircraft and scheduled flights to other small- and medium-sized cities in the region.

## **FITNESS**

### **Managerial Competence**

All of Austin Express's owners and key personnel formerly were employed by Conquest Airlines Corp., an Austin-based commuter carrier that had served various Texas cities with Metro III aircraft for eight years. Recently, Conquest was acquired by new owners, who terminated its operations on July 28 and relocated the company to Oklahoma.

---

<sup>3</sup> These individuals are James D. Echols (15.2 percent of the stock), S. Timothy Clarey (12.2 percent), Debbi K. Woofter (10.4 percent), Michael G. Kennedy and Bennie Ray Warren, Jr. (9.8 percent each), Steven W. Riggs, James R. Eskew, and Robert E. Hoover (8.8 percent each), Michael D. Meschner (8.6 percent), and Julie B. Bowers (7.6 percent). The applicant states that Mr. Echols has already paid for his stock, and that, by October 1, 1997, the company will have received either cash or notes covering the remaining nine stock purchases.

Mr. James D. Echols holds the positions of Chairman of the applicant's Board of Directors, President, and Director of Safety.<sup>4</sup> He has a 40-year background in engineering and testing of aerospace radar countermeasures and target identification; navigation and guidance systems; and LORAN-C equipment. He gained much of his 30 years of flying experience while employed by the Texas Defense Research Laboratory and by Lear, Inc., where he flew autopilot certification and verification flight tests and conducted pilot and maintenance training on autopilots and gyros at a number of international airlines employing Caravelle aircraft. In February 1996, after a two-year period as a self-employed investor, Mr. Echols was invited by Conquest's senior management to invest in the carrier, which had filed for Chapter 11 bankruptcy protection in the previous month. He was subsequently named Chief Operating Officer of Conquest. Mr. Echols, who holds an FAA-issued Airline Transport Pilot Certificate, also served Conquest as a pilot on all of its routes and as its Director of Safety until its shutdown in July 1997.

Mr. S. Timothy Clarey is the applicant's Executive Vice President. Mr. Clarey began his 30-year aviation career in the accounting department of Mohawk/Allegheny Airlines. He also worked as supervisor of passenger interline accounting at American Airlines, was Director of Revenue Accounting at Empire/Piedmont Airlines, and was General Manager of Mohawk Airlines. In 1994 he joined Air L.A., a publicly held Los Angeles-based commuter carrier, where he held the positions of General Manager and President. After Air L.A. acquired Conquest in 1995 and ceased its own operations, Mr. Clarey worked for Conquest until July 1997 as its Executive Vice President, with responsibility for scheduling, route development, charter operations, customer service and reservations.

Mr. Bennie Ray Warren, Jr., is Austin Express's Vice President of Maintenance. After spending four years as an air-conditioning service technician, Mr. Warren joined Conquest in 1989. He served the carrier in increasingly responsible maintenance positions, ending as Chief of Maintenance at the time Conquest stopped operating. He holds an Airframe and Powerplant Mechanic Certificate and private pilot license from the FAA.

Mr. Michael G. Kennedy is the applicant's Director of Operations. He holds an FAA-issued Airline Transport Pilot Certificate and is authorized to serve as a Part 121 check airman and instructor. Mr. Kennedy has accumulated over 15 years of flight experience with such companies as Wings West, Bar Harbor Airlines, Northeast Express, and Air L.A. He joined conquest in 1995 and served the carrier as its Director of Training and Director of Operations until July 1997 when it ceased operating.

Mr. Steven W. Riggs is Austin Express's Chief Pilot. He joined Conquest as a pilot in the year it obtained its commuter authorization in 1989 and was subsequently promoted to Chief Pilot, the position he held until the carrier stopped flying in July 1997. Prior to joining Conquest, Mr. Riggs worked in construction and engineering positions. He holds an FAA Airline Transport Pilot Certificate and has over 8,000 hours of flight time.

---

<sup>4</sup> Mr. Echols also owns approximately 16 percent of the stock of Conquest Airlines Corp.

Taking into consideration the experience of the applicant's personnel<sup>5</sup> with the Metro III aircraft and Texas commuter markets, and the fact that the FAA must also review the qualifications of certain of these individuals to determine if they meet the requirements for their positions,<sup>6</sup> we tentatively conclude that Austin Express has the management and technical ability to conduct the proposed operations as a commuter air carrier.

## **Financial Plan and Operating Proposal**

If Austin Express is found fit to conduct scheduled service, it plans to begin offering four round-trip flights per weekday between Austin and Beaumont/Port Arthur, Corpus Christi, and Tyler, Texas, with a fleet of four leased 19-seat Fairchild Metro III aircraft. Within the first six months of operations, the company anticipates that passenger demand will warrant the addition of two leased 30-passenger Embraer Brasilias and the opening of scheduled service at the same frequency level to additional Texas cities. The applicant states that its headquarters will occupy leased space near Austin's Robert Mueller Municipal Airport, and that its maintenance base will be located in Beaumont. It further notes that it has made arrangements for spare engines, parts and supplies, ground equipment, station facilities, reservations equipment, and crew training.

Austin Express furnished a schedule of estimated pre-operating expenses<sup>7</sup> and a detailed breakdown of forecast traffic statistics and of operating revenues and expenses per block-hour for its first two years of scheduled passenger operations. We have examined the applicant's cost forecasts, which are based in large part on the costs experienced by Conquest, and have found them to be reasonable. Based on our review of the applicant's forecasts, we have calculated the

---

<sup>5</sup> In addition to the individuals discussed above, Austin Express has on its management team a number of other former Conquest employees: Ms. Debbi K. Woofter, the applicant's Vice President of Finance, has over ten years of financial analytical experience. She was Conquest's Chief Financial Officer from November 1995, until it closed in July 1997. Mr. James R. Eskew, the applicant's Director of Maintenance, is an FAA-certified Airframe and Powerplant Mechanic. He joined Conquest in 1990 as an aircraft mechanic and subsequently served the company as its St. Paul, Minnesota, maintenance base manager, Chief Inspector, and Chief of Maintenance. Mr. Robert E. Hoover, the applicant's Chief Inspector, initially was employed by Conquest in 1993 as training manager, and in 1997 became its Chief Inspector. Mr. Hoover has also worked for Grand Airways and Wings West as an airframe and powerplant mechanic, and Casino Airlines as Director of Maintenance. He holds an FAA Airframe and Powerplant Mechanic Certificate. Mr. Michael D. Meschner is Director of Training, a position he held with Conquest for the past two years. Previously, he had a 20-year career as a pilot and examiner with the U.S. Air Force. Ms. Julie B. Bowers is Director of Stations and Reservations. Over a 17-year career in the airline industry, M. Bowers was Assistant Manager of Reservations and Manager of Customer Service for Empire/Piedmont, Director of Reservations for the original Mohawk Airlines, and Director of Reservations for Conquest.

<sup>6</sup> Before authorizing a carrier to conduct commuter operations, the FAA evaluates the carrier's Directors of Maintenance and Operations and Chief Pilot with respect to the minimum qualifications for those positions as prescribed in Part 121 of the Federal Aviation Regulations.

<sup>7</sup> Austin Express states that in addition to the funds paid for his stock purchase, Mr. Echols has advanced the company a substantial sum to cover its FAA certification costs, for which Mr. Echols holds a convertible note.

amount of funds that Austin Express will need to have available to meet the Department's financial fitness criteria.<sup>8</sup>

By October 1, Austin Express anticipates having paid-in-capital in the mid-six-figure range. In addition to these resources, SFO Group of Foster City, California, has declared its intent to make available to the applicant a 15-year line-of-credit in an amount more than sufficient to cover its start-up costs and to provide a substantial working capital reserve. The credit facility is conditioned upon Austin Express's providing a seat on its board of directors for Mr. John P. Bartlett, President of SFO.<sup>9</sup>

In consideration of the above, we tentatively conclude that Austin Express has developed a reasonable operating proposal and will have access to sufficient funds to undertake the proposed commuter air service without imposing undue risks on the public or their funds.

### **Compliance Disposition**

The applicant states that no charges of fraud, felony or antitrust violations, or of unfair, anticompetitive or deceptive business practices have been filed against it or any of its key personnel within the past ten years, and that there are no judgments outstanding against these entities or individuals. Austin Express further states that neither it nor any of its key personnel have been the subject of any formal complaints or enforcement actions within the past ten years.

We have researched the safety and compliance record of Conquest and the Austin Express personnel who formerly were employed by Conquest. FAA and NTSB records reveal that Conquest has had eight incidents and no accidents over the past seven years. No injuries were reported in any of the incidents, which primarily were caused by equipment malfunctions. FAA files show that Conquest has three open enforcement cases in which civil penalties are contemplated. One of these cases involves alleged violations in 1994 of FAA rules on security checks to be performed on prospective employees, one involves alleged maintenance discrepancies that occurred in August 1996, and the third involves alleged operation of unairworthy aircraft in March 1997. With respect to the latter case, the FAA states that certain Conquest mechanics, who will not be associated with Austin Express, failed to follow proper

---

<sup>8</sup> To meet the Department's financial fitness criteria, an applicant should have access to financial resources sufficient to cover its pre-operating expenses and the expenses that are reasonably projected to be incurred during three months of normal commuter operations. Because forecasts of the first several months of air transportation service frequently do not include all costs that are 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. Projected revenues are not used to offset any of this amount.

<sup>9</sup> The applicant furnished a copy of SFO's letter of intent to provide the financing. SFO states that it is a ten-year old business whose primary function is to arrange for equipment leasing and sales and to provide financing to qualifying entities through its network of banks, private investors and investment groups. The applicant states that SFO is not related to it or any of its owners or personnel and is not a source of any equipment or other resources to the company. The applicant further states that it has investigated SFO's bank references and found that all of its accounts have been in good standing for the past six years.

maintenance procedures, that none of the former Conquest management personnel who will be holding management positions at Austin Express were found to have been involved in any of these alleged violations, and that no enforcement action is pending or contemplated against any of them. The FAA further states that Austin Express has applied for an FAA Certificate and Operations Specifications authorizing it to engage in scheduled passenger operations, that the Part 121 certification work is proceeding normally, that the proposed key personnel have been found qualified to hold their respective positions, and that the FAA knows of no reason why we should not find the applicant fit.

The Department's records reveal no consumer complaints about Conquest since 1994, and, according to records maintained by the Office of Airline Information, Conquest filed its Part 298 reports generally in a timely and accurate manner.

In light of the foregoing, we tentatively conclude that Austin Express will have the proper regard for the laws and regulations governing its service to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices are followed.

### **CITIZENSHIP**

The statute requires that authority to engage in air transportation operations be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15) (*see* former section 101(16) of the Act). 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 or controlled by U.S. citizens. We have also interpreted the statute to require that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Austin Express is owned by ten individuals, all of whom are U.S. citizens. In addition, the applicant has provided an affidavit attesting that it is a citizen of the United States and has stated that its owners, the members of its board of directors, and all other key personnel are U.S. citizens. Further, there is nothing in the record that would lead us to conclude that control of this applicant is not with United States citizens.

In view of the foregoing, we tentatively conclude that Austin Express is a U.S. citizen and that it is fit, willing, and able to provide the scheduled passenger service it proposes as a commuter.

### **OBJECTIONS**

We will give interested persons 15 days following the service date of this order to show cause why the tentative findings and conclusions made here should not be made final; answers to objections will be due within 10 days thereafter. We expect that persons objecting to our tentative findings and conclusions will support their objections with relevant and material facts. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will enter an order making final our tentative findings and conclusions.

### **EFFECTIVE COMMUTER AUTHORIZATION**

## **CONDITIONS AND LIMITATIONS**

In the event that we find Austin Express fit, willing, and able to conduct the proposed scheduled service, we will issue to it a Commuter Air Carrier Authorization. However, that authorization will not become effective until the company has fulfilled all of the requirements for effectiveness as set forth in the Terms, Conditions, and Limitations attached to it. Among other things, this includes our receipt of evidence of Austin Express's authority from the FAA to conduct scheduled passenger operations, evidence of liability insurance coverage that meets the requirements of section 205.5(b) of our rules, and evidence that it has actually obtain the funds needed to meet our financial fitness criteria.

Our conclusion as to Austin Express's fitness is based on the operating plans described in its application. These plans call for Austin Express to engage in commuter air transportation with six leased aircraft. Our fitness findings might no longer apply if the company were to substantially change the scope of its operations through the introduction of several additional aircraft. Therefore, once the applicant's commuter authority becomes effective, should Austin Express propose to utilize more than six aircraft in its operations, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to placing the additional aircraft into service.

Finally , we remind Austin Express of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a company is found fit initially, it must remain fit in order to hold its authority. To be assured that commuter 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. In this regard, should Austin Express propose any substantial changes in its ownership, management, or

operations, it must first comply with the requirements of section 204.5 of our regulations.<sup>10</sup> The compliance of the carrier with this requirement is essential if we are to carry out our responsibilities under the statute.<sup>11</sup>

**ACCORDINGLY,**

1. We direct all interested persons to show cause why we should not issue an order finding that Austin Express, Inc., is fit, willing, and able under 49 U.S.C. 41738 to provide service as a commuter air carrier.

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed fitness findings set out here to file such objections with Carol Woods, Air Carrier Fitness Division, X-56, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, and serve them on all persons listed in Attachment A no later than 15 days after the service date of this order; answers to objections will be due within 10 days thereafter.

3. We will accord full consideration to the matters and issues raised in any timely and properly filed objections before we take further action.

4. In the event no one files objections, we will deem all further procedural steps waived, and we will enter an order making final the tentative findings and conclusions set out here and awarding Austin Express, Inc., a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.<sup>12</sup>

5. We will serve a copy of this order on the persons listed in Attachment A.

6. We will publish a notice of this order in the Federal Register.

---

<sup>10</sup> Austin Express 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 Austin Express fails to file the information or if the information fails to demonstrate that it 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 commuter authority.

<sup>11</sup> We also remind Austin Express about the requirements of section 204.7 of our rules which provides, among other things, that: (1) the commuter 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 the operations for which it was found fit and subsequently ceases such operations for any reason, it may not resume commuter 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. The carrier must file a notice of its intent to resume operations at least 45 days prior to said resumption. This notice shall contain updated fitness information.

<sup>12</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

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>.*