



Order 97-10-20
UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation
on the 27th day of October, 1997

Served October 27, 1997

**Exec Express II, Inc.,
d/b/a Lone Star Airlines
d/b/a Aspen Mountain Air**

**Violations of 49 U.S.C. 41101 and
Order 94-9-5**

CONSENT ORDER

This consent order concerns unauthorized service operated by Exec Express II, Inc., d/b/a Lone Star Airlines, d/b/a Aspen Mountain Air (Lone Star), in violation of 49 U.S.C. §41101 and Order 94-9-5, the order granting the carrier economic authority to operate. The violations consisted of the operation of a fleet of aircraft that exceeded in number that to which the carrier was restricted by the terms of its certificate award. This order directs Lone Star to cease and desist from future violations and to pay compromise civil penalties.

Lone Star is a certificated air carrier that has provided service since 1984 in Texas and several nearby states. It was found fit and received certificate authority from the Department in 1994 under 49 U.S.C. §41102 to provide scheduled service with small aircraft.¹ In addition, the order conferring Lone Star its certificate authority required that the carrier advise the Department should it intend to increase its aircraft fleet by three or more aircraft from the level current at the time of its certification (i.e., nine) and seek a redetermination of its fitness under 14 CFR 204.5 prior to embarking on any such expansion.² The Office of Aviation Enforcement and Proceedings (the Enforcement Office) has recently learned that Lone Star increased the number of aircraft currently listed on its

¹ Order 94-8-44 and Order 94-9-5.

² Order 94-8-44, p. 5 and attached specimen certificate.

operations specifications beyond that permitted by Order 94-8-44 without first seeking prior Department economic approval as required by that order.³

In mitigation, Lone Star states that the certificate condition at issue was imposed upon “old” Lone Star Airlines in 1994 under drastically different circumstances — different ownership, different financial condition, different management and different operating plan. Lone Star states that at that time the Department was concerned about the intention of Lone Star, which then had a nine-aircraft fleet, to expand very rapidly by adding two to five daily roundtrips between Dallas (Love Field) and nine other points to its pre-existing service pattern. Since 1994, the company’s key personnel have changed entirely with the exception of one non-executive position (chief pilot); as a consequence, Lone Star states that its current management was simply unaware of the preexisting certificate condition. Moreover, Lone Star states that the FAA Flight Standards District Office (FSDO) having jurisdiction over Lone Star raised no objection to the respective additions of a twelfth, thirteenth and fourteenth aircraft to Lone Star’s Part 121 operations specifications.

Lone Star further asserts that throughout the above period its fitness was never in question, given that (i) its new owner (Peak International, Inc.) has invested approximately \$6.5 million in the company since its acquisition in November 1996 and has committed to provide sufficient liquidity, as needed, to support Lone Star’s current business plan; (ii) the post-acquisition continuing fitness review of Lone Star by the Department did not result in a request for information regarding the number of aircraft in the carrier’s fleet until recently; and (iii) during the past six months the Department twice found Lone Star fit under its new ownership and management in the context of essential air service (EAS) decisions (Order 97-4-29, April 28, 1997, and Order 97-9-31, September 30, 1997).⁴ Lone Star also states that its recent fleet expansions have been undertaken in part to fulfill EAS obligations negotiated with the Department this year. Finally, Lone Star states that applicability of the certificate condition to the incremental expansions in which Lone Star has engaged is questionable due to the condition’s ambiguity, and the reference to the explanatory text (Order 94-8-44 at 4-5) suggests strongly that the condition was intended to apply only to expansion events involving three or more aircraft at a time, which Lone Star never attempted.⁵

³ Lone Star has had as many as 14 aircraft on its operations specifications and, for a short period, has had 12 aircraft carrying passengers.

⁴ In issuing these orders, the Department did not expressly address or approve the carrier’s fleet size.

⁵ The Enforcement Office interprets the same language as clearly prohibiting the carrier from expanding its fleet beyond 11 aircraft without prior Department economic approval, irrespective of the number of aircraft added at any one time.

The Enforcement Office has considered the information and arguments presented by Lone Star but continues to believe that enforcement action is warranted in light of the nature and extent of the unauthorized service in question. The Enforcement Office and Lone Star have reached a settlement of this matter. In order to avoid litigation, and without admitting or denying the violations described above, Lone Star consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §41101 and to the assessment of \$18,000 in compromise of potential civil penalties otherwise assessable under the provisions of 49 U.S.C. §46301. Of this amount, Lone Star shall pay \$9,000 in three installments of \$3,000 each according to the schedule set forth in the ordering paragraphs below. The remaining \$9,000 shall be suspended for one year following the service date of this order and shall be forgiven unless Lone Star fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41101 or this order during the year following service of this order, in which case the entire unpaid portion of the \$18,000 assessed penalty shall become due and payable immediately. The Enforcement Office believes that the civil penalty assessment in this instance is warranted in light of the nature and extent of the activities in question and the mitigation presented. This order and the penalty it assesses will provide an incentive to air carriers to comply fully with the requirements of 49 U.S.C. §41101 and Department orders.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as in the public interest;
2. We find that Exec Express II, Inc., violated 49 U.S.C. §41101 and Order 94-9-5 by performing service with an aircraft fleet whose size exceeded the limits imposed by that order without prior economic approval by the Department;
3. We order Exec Express II, Inc., to cease and desist from further violations of 49 U.S.C. §41101 and Order 94-9-5 as described above;
4. Exec Express II, Inc., is assessed \$18,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 of this order. Of this amount, \$9,000 shall be paid in three equal installments of \$3,000. The first payment shall be due within 15 days of the service date of this order; the second and third payments shall be due, respectively, 180 days and 345 days after the service date of this order. The remaining \$9,000 of the penalty assessed here shall be suspended for one year following the service date of this order and shall be forgiven unless Exec Express II, Inc., fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. §41101

or this order, during that period, in which case the entire unpaid portion of the assessed penalty shall become due and payable immediately and Exec Express II, Inc., may be subject to further enforcement action; and

5. Payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U. S. Treasury in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Exec Express II, Inc., to assessment of interest, penalty and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own motion.

By:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)