



Order 98-2-30

Served: March 3, 1998

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

Issued by the Department of Transportation
on the 13th day of February, 1998

Applications of

EVA AIRWAYS CORPORATION

VIRGIN ATLANTIC AIRWAYS LIMITED

for foreign air carrier permits under
section 41301 of Title 49 of the U.S. Code

Dockets **OST-97-2645**

OST-95-923

ORDER ISSUING FOREIGN AIR CARRIER PERMITS

The captioned applicants seek foreign air carrier permits under section 41301 of Title 49 of the U.S. Code in the indicated dockets. The applications are fully described in attachments to this order. Because the public interest bases for granting these applications are clear, the applicants' fitness is established by evidence of record and unchallenged, and there are no significant ownership and control questions, it is appropriate to use this simplified, Subpart Q procedure to grant the requested authority.¹

Each applicant has filed and perfected its application as required by 14 CFR Part 211 and served it as required by 14 CFR 302.1705. Each application was summarized in the Federal Register, as cited in its descriptive attachment, and in the Department's published weekly list of applications filed. These notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. No answers to these applications were filed.

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.

Public Interest

We find that grant of these foreign air carrier permits is in the public interest, and that each applicant is qualified to conduct the proposed operations. The authority we are granting is provided for in the Air Transport Services Agreement between the United States and the applicant's homeland, and each carrier has been designated by its government under that agreement. In each case where charter authority is conferred, that authority is consistent with our foreign carrier charter rule, 14 CFR Part 212.²

Operational and Financial Fitness

Except as noted,³ each carrier has demonstrated that it is financially, managerially, and operationally fit to perform the foreign air transportation proposed. The applicants already have operated successfully to this country under previously issued authority. They have furnished financial information and/or evidence of government backing which indicates that they can operate without jeopardizing passenger or shipper funds.

We have reviewed each applicant's evidence of managerial/operational fitness, and have consulted the Federal Aviation Administration with respect to each. Each applicant has shown by its evidence, its history of operations to this country, and/or other officially noticeable information, that it has competent management and can operate safely. Each holds effective authority from its homeland government for the operations proposed and states that it has had no safety or tariff violations in the preceding five years. The FAA has advised us that each applicant conducts its operations to this country in accordance with Part 129 of the Federal Aviation Regulations.

Ownership and Control

Except as noted, each applicant has submitted evidence to establish that it is substantially owned and effectively controlled by nationals, or the Government, of its claimed homeland. To the extent a question may exist concerning the non-homeland involvement in the applicants, we find that waiver of our ownership and control standard, to the extent necessary, is warranted. There is no evidence that the ownership and control of the carriers would make grant of this authority inimical to U.S. aviation policy or interests.

Terms, Conditions and Limitations

² Under Part 212, unless otherwise ordered by the Department (or, previously, by the CAB), any foreign air carrier whose permit authorizes charters may perform Third and Fourth Freedom charters without limitation or specific prior approval, and may perform Fifth Freedom charters upon obtaining a specific statement of authorization from the Department.

³ As discussed later in this order, our fitness, ownership and control findings with respect to Virgin Atlantic Airways are based on a bilateral Exchange of Notes, rather than on evidentiary submissions by that applicant.

Each foreign air carrier permit is subject to the standard terms, conditions and limitations we consistently impose in the public interest. Since the authority is provided for in a bilateral agreement, the permit is made coextensive with that agreement.

Pendente Lite Exemptions

Each carrier is operating under current exemption authority. Those exemptions will expire by their own terms 90 days after we submit this order for review under section 41307 of Title 49 of the U.S. Code.

Findings and Conclusions

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 a foreign air carrier permit to each applicant in the form attached;
2. To the extent the authority conferred is the subject of a bilateral agreement, each applicant is qualified and designated by its government under the applicable agreement;
3. Each applicant is fit, willing and able to perform properly the foreign air transportation described in its attached permit, and to conform to the provisions of the U.S. Code and to the Department's rules, regulations, and requirements;
4. The public interest requires that the exercise of the privileges granted by the attached permits be subject to the terms, conditions and limitations contained in and attached to those permits and to such others required by the public interest as the Department may prescribe;
5. Each applicant is substantially owned and effectively controlled by nationals, or the Government, of its respective homeland; or that waiver of our ownership and control standard, to the extent necessary, is warranted;
6. The issuance of these permits does not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in subsection 313.4(a)(1) of the Department's Regulations;⁴ and
7. The public interest does not require an oral evidentiary hearing on any of these applications.

⁴ Our finding is based on the fact that each permit issued will not result in a near-term increase in annual fuel consumption by the applicant in excess of 10 million gallons.

ACCORDINGLY,

1. We issue, in the forms attached, a foreign air carrier permit to each applicant;
2. We grant all motions and requests to file documents out of time, to submit additional or supplementary materials, and to withdraw pleadings;
3. To the extent not granted, the applications and all motions and other requests in these dockets are denied;
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 permits shall become effective on the 61st day after their submission for section 41307 review, or upon the date of 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, whichever occurs earlier;⁵ and
5. We will serve this order on the applicants and other parties in these dockets.

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://dms.dot.gov/general/orders/aviation.html>*

⁵ This order was submitted for review under section 41307 of Title 49 of the U.S. Code on February 13, 1998. On February 26, 1998, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

Foreign Air Carrier Permit Application of

**EVA AIRWAYS CORPORATION
Docket OST-97-2645**

Flag: Taiwan

Federal Register Notice: 62 FR 36330, July 7, 1997

Filing Date: June 23, 1997

Authority Sought: Amendment of foreign air carrier permit, last issued by Order 91-9-32, to authorize scheduled foreign air transportation of persons, property and mail from points behind Taiwan, via Taiwan and intermediate points, to a point or points in the United States, and beyond; and charter foreign air transportation.

Pleadings: The Washington Parties filed an answer in support.

Public Interest: The authority is consistent with the provisions of the Air Transport Agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office, initialed February 28, 1997.

Fitness: EVA was formed in 1989 and has held a foreign air carrier permit since 1991. It holds exemption authority to conduct the requested services (see Notice of Action Taken dated July 18, 1997, in Docket OST-97-2644). The carrier is properly licensed by its homeland, has had no safety violations or fatal accidents in the last five years, has experienced management, and appears financially sound:

| Financial Indicators (\$ thousands) as of: | <u>12/31/96</u> | <u>12/31/95</u> |
|---|-----------------|-----------------|
| Total Assets | \$2,554.3 | \$2,465.4 |
| Total Liabilities | 1,843.1 | 1,931.0 |
| Owners' Equity | 711.2 | 534.4 |
| Operating Profit (year ending) | 98.0 | 90.7 |

DOT verifies compliance with 14 CFR 203 (Warsaw liability waiver), 205 (insurance requirement, and 129 (FAA operations specifications).

Ownership and Control: The record indicates that EVA is substantially owned and effectively controlled by citizens of Taiwan.

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

PERMIT TO FOREIGN AIR CARRIER
(as amended and reissued)

EVA AIRWAYS CORPORATION

A Flag Carrier of Taiwan

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 scheduled foreign air transportation of persons, property and mail, as follows:

Between points behind Taiwan, via Taiwan and intermediate points, and any point or points in the United States, and beyond.

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

In the conduct of charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third country point, provided that such charter traffic is carried on a flight that serves Taiwan for purposes of carrying traffic between the United States and Taiwan.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and 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 American Institute in Taiwan and the Taipei Economic and Cultural Representative Office are or shall become parties.

This permit shall be effective on February 26, 1998. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Taipei Economic and Cultural Representative Office (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Taipei Economic and Cultural Representative Office in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office become parties.

The Department of Transportation has executed this permit and affixed its seal on February 26, 1998.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

ATTACHMENT
Docket OST-97-2645

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 Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (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).

Foreign Air Carrier Permit Application of

VIRGIN ATLANTIC AIRWAYS LIMITED
Docket OST-95-923

Flag: United Kingdom of Great Britain and Northern Ireland

Federal Register Notice: 59 FR 4749, February 1, 1994; and 60 FR 66619, December 26, 1995

Filing Date: January 11, 1994, and December 11, 1995

Authority Sought: Amendment of current foreign air carrier permit, last issued by Order 92-11-37, to authorize scheduled foreign air transportation of persons, property and mail over the following routes: (1) London, England-San Francisco, California; (2) London, England-Washington, D.C.; and (3) Manchester, England-Orlando, Florida.

Pleadings: No answers were filed.

Public Interest: The authority is consistent with the provisions of the Air Services Agreement between the United States and the United Kingdom of Great Britain and Northern Ireland, as supplemented by subsequent U.S.-U.K. Memoranda of Consultations that are being applied on the basis of comity and reciprocity. Virgin Atlantic Airways has been designated by the United Kingdom to operate the requested services.

Fitness, Ownership and Control: We find that Virgin Atlantic Airways is operationally and financially qualified to conduct the proposed services, and substantially owned and effectively controlled by citizens of the United Kingdom. We make this finding based on the May 25, 1989, U.S.-U.K. Exchange of Notes under which the aviation authorities of each country will normally accept, on a reciprocal basis, the other's fitness and citizenship determinations in regard to carriers seeking authority to conduct certain bilateral services, including the requested authority. Virgin Atlantic Airways currently holds Department exemption authority to conduct the operations at issue here (*see* Order 96-2-54).

DOT verifies compliance with 14 CFR 203 (Warsaw liability waiver), 205 (insurance requirement, and 129 (FAA operations specifications).

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

PERMIT TO FOREIGN AIR CARRIER
(as amended and reissued)

VIRGIN ATLANTIC AIRWAYS LIMITED

A Flag Carrier of United Kingdom
of Great Britain and Northern Ireland

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 foreign air transportation as follows:

- A. (1) Between London, England; and the coterminal points Boston, MA; Los Angeles, CA; Miami, FL; New York, NY; Newark, NJ; Orlando, FL; San Francisco, CA; and Washington, DC.
- (2) Between Manchester, England, and Orlando, FL.
- B. Between any point or points in the United Kingdom¹ and any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers.
- C. Between any point or points in the United States and any point or points not in the United Kingdom or the United States.

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 conditions:

¹ For the purpose of this permit, "United Kingdom" shall mean the United Kingdom of Great Britain and Northern Ireland, but not any territory outside the British Isles which may be under the sovereignty, protection, jurisdiction or trusteeship of the Government of the United Kingdom.

1. The exercise of the authority granted by paragraph **A** shall be limited to scheduled combination foreign air transportation of persons, property and mail.
2. The exercise of authority granted by paragraphs **B** and **C** shall be limited to charter foreign air transportation of persons and property.
3. The holder is authorized to operate services and carry traffic (including “blind sector traffic,” as defined in 14 CFR 216 of the Department’s Regulations) as provided for in section 5 of Annex 1 to the Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, effective July 23, 1977.
4. Charter flights authorized by paragraph **C** must be individually approved by the Department unless this requirement is waived by order of the Department. Application for such charters shall be made as provided in the Department’s regulations governing charters.
5. The authority of the holder to perform charters originating in the United Kingdom shall be subject to the terms, conditions, and limitations contained in the rules, regulations or licenses issued by the Civil Aviation Authority of the United Kingdom authorizing the performance of such charters, including waivers or variations. The authority of the holder to perform charters (1) originating in the United States, or (2) between any point or points in the United States and any point or points not in the United Kingdom or the United States is subject to applicable regulations of the Department, except where waivers of these regulations have been granted by the Department.
6. The holder shall not allow charter traffic to stop over at one point in the United States before transporting it to, or after transporting it from, any other point in the United States.
7. Charter transportation, provided pursuant to paragraph **B** of this permit, which originates in the United States and stops over at any point or points outside the United Kingdom, shall also stop over in the United Kingdom for at least two consecutive nights. Unless the Department specifically authorizes, in advance, shortening or eliminating the United Kingdom stopover, all traffic originating in the United States and stopping over in the United Kingdom for less than two consecutive nights shall be carried pursuant to paragraph **C** of this permit.
8. The Department, by order and without hearing, may require advance approval of individual charter flights conducted under the authority granted by paragraph **B** of this permit, if it finds: (1) either (a) that the requirement of such prior approval is authorized under the terms of a treaty, agreement or understanding, or amendments or protocols to such instrument, in effect between the United States and the United Kingdom; or (b) that the Government of the United Kingdom has denied or failed to prevent the denial of, in whole or in part, the fair and equal opportunity to exercise the operating rights provided for in an air transport agreement between the United Kingdom and the United States of any U.S. air carrier designated thereunder with respect to flight operations to, from, through, or over the United Kingdom; and (2) that such action is required in the public interest.

9. 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 United Kingdom are or shall become parties.

This permit shall be effective on February 26, 1998. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Government of the United Kingdom (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of the United Kingdom in lieu of the holder; or (4) upon the termination or expiration of the Air Services Agreement between the United States and the Government of the United Kingdom and Northern Ireland, as amended. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and the United Kingdom and Northern Ireland become parties.

The Department of Transportation has executed this permit and affixed its seal on February 26, 1998.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

CONDITIONS OF AUTHORITY

ATTACHMENT
Docket OST-95-923

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 Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (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).

