

Order 98-6-33  
Served June 26, 1998



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

Issued by the Department of Transportation  
on the 26th day of June, 1998

Applications of

**PLANET AIRWAYS, INC.**

for certificates of public convenience and necessity under  
49 U.S.C. 41102 to engage in interstate and foreign  
charter air transportation of persons, property, and mail

**Dockets OST-97-2940  
OST-97-2941**

**ORDER TO SHOW CAUSE  
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY**

**Summary**

By this order, we tentatively conclude that Planet Airways, Inc., is a citizen of the United States, and is fit, willing, and able to provide interstate and foreign charter air transportation of persons, property, and mail, and should be issued certificates of public convenience and necessity for such operations.

**Background**

Section 41102 of Title 49 of the United States Code (Transportation) (“the statute”) directs us to determine whether applicants for certificate authority to provide interstate and foreign charter air transportation are fit, willing, and able to perform such transportation, and to comply with the statute and the regulations of the Department. In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act’s 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 company’s fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing an undue risk to consumers, and (3)

will comply with the statute and regulations imposed by Federal and States agencies. We must also find that the applicant is a U.S. citizen.

On September 25, 1997, Planet Airways, Inc., filed applications in Dockets OST-97-2940 and OST-97-2941 for certificates to provide interstate and foreign charter air transportation of persons, property, and mail pursuant to section 41102. Planet Airways accompanied its applications with the information required by section 204.3 of our regulations.<sup>1</sup>

We have received no answers to the applications and no special issues regarding the applicant have come to our attention that would warrant oral hearing procedures. Under these circumstances, we propose to decide the issue of Planet Airway's fitness on the basis of the written record, and we tentatively conclude that Planet Airways is a U.S. citizen and is fit, willing, and able to operate its proposed interstate and foreign charter passenger service. However, we will give interested persons an opportunity to show cause why we should not adopt as final these tentative findings and conclusions.

## **FITNESS**

### **The Company**

Planet Airways was formed under the laws of the State of Florida in 1995. Its headquarters is in Orlando while its operations base is located in Ft. Lauderdale. The company has not held any type of air transportation authority.

Once certificated, Planet Airways proposes to commence charter passenger operations using, initially, one 128-seat Boeing 727-100 aircraft. The applicant indicates that it plans to add a second Boeing 727 aircraft during its second year of operations based on market conditions and expansion needs at that time. During the first year, Planet Airways states that it proposes to operate charter track programs on behalf of charter operators and casinos to Atlantic City, and, in addition, plans to operate single entity public charters between various points in the United States and other gambling locations, including the Bahamas, Gulfport, and Las Vegas.

Planet Airways common stock is equally held by Peter V. Garrambone, Anthony C. DeCamillus, and Louis J. Pearlman, the applicant's President, Executive Vice President, and Board Chairman, respectively.

### **Managerial Competence**

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<sup>1</sup> Information supplementing Planet Airways' applications were filed on December 4 and 9, 1997, and January 15, February 19, March 17, April 28 and 30, May 6, and June 12, 1998. Planet Airways requested that certain information contained in its January 15 filing be withheld from public disclosure. By letter dated February 18, 1998, the Department granted Planet Airways' request for confidentiality.

Mr. Peter Garrambone has been Planet Airways' President since August 1997. Before then, he was an aviation consultant for two years. Prior to that, Mr. Garrambone was Chief Operating Officer, Board Chairman, and Vice President of Airship Airways, a non-operational start-up company, for three years. Mr. Garrambone's other aviation experience includes one year as an officer with Federal Airlines Corporation, three years as Board Chairman of Coastal Airlines Express, and twelve years as an officer and, later President, of Cosmopolitan Aviation Corporation. His non-aviation experience includes a total of 12 years as a General Contractor of American Builders and Developers and Gary Construction of Dix Hills, and five years as a New York City police officer.

Mr. Anthony DeCamillis joined Planet Airways as Executive Vice President and Treasurer in 1997, and in 1998, assumed the responsibilities of Director of Safety. Prior to joining the applicant, he served as Vice President of Corporate Finance with Trans Continental Airlines for three years. Mr. DeCamillis' other work experience includes serving as an assistant manager for Chatfield Dean Investment Bankers for four years, Vice President and Branch Manager for BC Financial Corporation for one year, Assistant Branch Manager for Blinder Robinson Investment Bankers for two years, and officer manager for A&B Property Management for one year.

Mr. Daniel D. Carson, an Airline Transport Pilot, joined Planet Airways in 1998 as General Manager and Director of Operations. Prior to accepting this position, he was employed simultaneously for six years as an instructor pilot for Delta Staffing Services and as Manager of Flight Operations and Quality Assurance for Carnival/Pan American World Airways. Prior to that, he served as General Manager and Chief Pilot for Jet Fleet International for several months, Director of Operations for Transtar for one year, Assistant Vice President and Director of Training for Flagship Express for one year, President and General Manager for Air World Services for one year, a pilot for Braniff for one year, Vice President of Flight Operations and Director of Training for Florida National Airlines for one year, and founder and President of American Aeronautical Institute, an instructional company for pilots and airline mechanics.

Mr. Andrew Alexopoulos, an Airframe and Powerplant Mechanic, joined Planet Airways' in 1998 as Director of Maintenance. Mr. Alexopoulos brings to the company twelve years of aviation maintenance experience that includes several months each with Laker Airways as Chief Inspector and Maintenance Manager and with Pemco Worldwide Services as Manager of Maintenance, three years with AirTran Airways as Supervisor of Maintenance Control, and eight years with Page Avjet Corporation as Quality Control Inspector and supervisory airframe and powerplant mechanic.

Mr. Clarence W. Nichols, an Airframe and Powerplant Mechanic, joined Planet Airways as Director of Quality Assurance in 1998. Mr. Nichols has served in the field of aviation maintenance for thirty-two years. His experience includes employment with Amerijet International as an aircraft mechanic and maintenance controller, Eastern Airlines as an aircraft inspector, and Emerald Airlines as an aircraft mechanic. Mr. Nichols spent the

majority of his aviation maintenance career serving in the U. S. Air Force Reserve and the U.S. Air Force.

Mr. Thomas J. Fitzgerald, an Airline Transport Pilot who has recorded 18,815 hours of flight time, will serve as Planet Airways' Chief Pilot. For the last four years, he has been employed by Carnival/Pan American World Airways as a Captain and flight instructor. Prior to that, Mr. Fitzgerald served for a total of three years as Chief Pilot and Captain for Great American Airways, as Director of Operations and Chief Pilot for Skybus Airlines, a non-operational start-up company, and as a flight instructor, check airman, and Captain for Bahamasair. Before then, he was employed for twenty-two years by Eastern Airlines as a flight instructor, check airman, and Captain.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Planet Airways has demonstrated that it has the management skills and technical ability to conduct its proposed certificated service.<sup>2</sup>

### **Financial Plan and Operating Proposal**

Planet Airways proposes to commence charter passenger operations using, initially, one 128-seat Boeing 727-100 aircraft. During the first year, it plans to operate charter track programs on behalf of charter operators and casinos to Atlantic City, and single entity public charters between various points in the United States and other gambling locations, including the Bahamas, Gulfport, and Las Vegas.

Planet Airways has provided a list of its pre-operating costs and a detailed quarterly estimate of its expenses for the first year of its proposed operations. The company expects that its pre-operating expenses will total \$326,002 and that it will incur \$2.96 million in operating expenses for its first year of operations. We have examined these estimates and find them to be reasonable. Based on our analysis of Planet Airways' forecasts, it appears that the applicant will need access to resources of \$1.06 million to meet the Department's financial fitness criteria.<sup>3</sup>

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<sup>2</sup> Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals.

<sup>3</sup> In evaluating an applicant's financial fitness, the Department generally asks that the company have access to financial resources sufficient to cover all pre-operating expenses plus a working capital reserve equal to the operating expenses that would be incurred during three months of normal certificated operations. Because projected operations during the first several months of air transportation services frequently do not include all costs that will be 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. In calculating available resources, projected revenues may not be used.

Planet Airways plans to derive the majority of its funding for its proposed operations from two \$500,000 promissory notes being made available to the company by Tatonka Capital Corporation.<sup>4</sup> In addition, Planet Airways has provided a letter from Barnett Bank verifying that it has a total of \$281,897 on deposit in its accounts as of April 22, 1998. Lastly, Mr. Louis Pearlman, Planet Airways' Chairman, furnished a letter pledging \$300,000 of his personal funds to be used for the company's general operating purposes. We have verified with Mr. Pearlman's bank that he has in excess of \$300,000 on deposit in his accounts. We, therefore, tentatively conclude that Planet Airways has the resources necessary to provide the certificated operations proposed without posing an undue risk to consumers or their funds.

### **Compliance Disposition**

The applicant stated that there have been no formal complaints filed or orders issued finding it, its owners, officers, or key personnel in violation of the statute; nor have any charges of unfair, deceptive or anticompetitive business practices, or of fraud, felony or antitrust violations been brought against any of these parties with two exceptions.<sup>5</sup> Planet Airways further stated that there are no actions or outstanding judgments filed against it, its owners, officers, or key personnel.

Our search of the Department's records found no compliance problems with Planet Airways, its owners, officers, or key personnel. Further, the FAA has stated that Planet Airways has applied for certification under Part 121 of the Federal Aviation Regulations and that the certification process is progressing normally. Moreover, the FAA stated that it knows of no reason why we should act unfavorably on Planet Airways' application.

Based on these considerations, we tentatively conclude that Planet Airways will have the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

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<sup>4</sup> Tatonka Capital Corporation, a Colorado company headquartered in Denver, is a full service leasing company specializing in providing equipment lease financing to state, local, and federal government departments and agencies. Its majority shareholders and principals, both U.S. citizens, are Mr. Robert Bauers, Board Chairman, and Ms. Carol Hansen, President. Tatonka furnished financial statements for the 1997 and 1996 calendar years that indicate the company possesses a healthy financial posture.

<sup>5</sup> Mr. DeCamillis was involved in a personal legal action in 1994 that has since been closed. Mr. Pearlman was the subject of a legal action in 1993 that was subsequently dismissed in 1995.

## CITIZENSHIP

Section 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires 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 by U.S. citizens. We have also interpreted the statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Planet Airways' equal shareholders are Peter V. Garrambone, Anthony C. DeCamillus, and Louis J. Pearlman, the applicant's President and Director, Executive Vice President and Director, and Board Chairman, respectively.

The applicant has provided an affidavit attesting that it is a U.S. citizen and has affirmed that its owners, officers, and all of its key personnel are U.S. citizens. Furthermore, there is nothing in the record that would lead us to conclude that control of Planet Airways is not with citizens of the United States.

In view of the foregoing, we tentatively conclude that Planet Airways is a U.S. citizen and is fit, willing, and able to provide the interstate and foreign charter passenger service it proposes.

## PUBLIC CONVENIENCE AND NECESSITY

No finding of consistency with the public convenience and necessity is required for the award of authority for interstate charter air transportation of persons, property, and mail under section 41102, although such a finding is required for authority to engage in foreign charter air transportation.

We tentatively find that the foreign charter air transportation proposed by Planet Airways is consistent with the public convenience and necessity. By Order 78-7-106, which instituted the *Former Large Irregular Air Service Investigation*, the Civil Aeronautics Board found that there was a continuing demand and need for additional charter air carriers. These findings remain valid and apply to the authority sought by Planet Airways. Therefore, if Planet Airways meets the fitness requirements of the statute, it will receive certificates authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail under section 41102.<sup>6</sup>

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<sup>6</sup> Pursuant to 49 U.S.C. 41307, issuance of foreign authority to the applicant is subject to Presidential review.

## OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect such persons to direct their objections, if any, to the applications and points at issue and to support such objections with detailed economic analyses.<sup>7</sup> We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Planet Airways' certification and fitness.

## CERTIFICATE CONDITIONS AND LIMITATIONS

If Planet Airways is found fit and issued the certificates it seeks, its authority will not become effective until the company has fulfilled all of the requirements for effectiveness as set forth in the terms and conditions attached to its certificates. Among other things, this includes our receipt of evidence that Planet Airways has been certified by the FAA to engage in the subject operations, that it has obtained passenger liability insurance coverage meeting the requirements of Part 205 of our rules, and third-party verification that the company has available sufficient funds to meet our financial fitness criteria.

Furthermore, we remind Planet Airways of the requirements of 49 U.S.C. 41110(e). Specifically, the section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that certificated 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.

Our tentative findings stated above are based on the operating plans described in Planet Airways' applications which utilizes one B-727 aircraft. These findings might no longer apply if the company were to substantially change the scope of its operations through the introduction of additional aircraft.<sup>8</sup> Therefore, once the applicant's certificates become effective, should Planet Airways propose to acquire any aircraft beyond the single B-727 discussed in its applications, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to implementing service with

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<sup>7</sup> If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedures should be specified (*see* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

<sup>8</sup> While Planet Airways has indicated its plans to add a second aircraft in the second year of operations, it has not demonstrated its fitness to operate more than the one aircraft presented in its first year forecast.

any additional aircraft. Furthermore, should Planet Airways propose any other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.<sup>9</sup> The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).<sup>10</sup>

Moreover, to aid the Department in monitoring the fitness of new carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report, within 45 days following the end of the first year of actual flight operations, to the Air Carrier Fitness Division. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,<sup>11</sup> and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

**ACCORDINGLY,**

1. We direct all interested persons to show cause why we should not issue an order making final our tentative findings and conclusions stated above and award certificates to Planet Airways, Inc., authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the certificate awards set forth here to file such objections with Department of Transportation Dockets, 400 7th Street, S.W.,

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<sup>9</sup> Planet Airways may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. If the carrier fails to file the information or if the information fails to demonstrate that the carrier 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 certificate authority.

<sup>10</sup> We also remind Planet Airways about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the certificate 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 operations for which it was found fit and subsequently ceases such operations, it may not resume certificated 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.

<sup>11</sup> These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations and a twelve-month income statement ending that same day.

Washington, D.C. 20590, in Dockets OST-97-2940 and OST-97-2941, and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.<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.

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>*

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

SPECIMEN



Terms, Conditions, and Limitations

**PLANET AIRWAYS, INC.**

is authorized to engage in interstate charter air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

- (1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:
  - (a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).
  - (b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.
  - (c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.
  - (d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.
- (2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card), issue tickets for the operations proposed under this certificate, or enter into contracts with charter operators, and any advertisement

by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(4) The holder's authority is effective only to the extent that such operations are also authorized by the FAA.

(5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(7) The holder is not authorized to engage in air transportation operations between points within the State of Alaska.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

**SERVICE LIST FOR  
PLANET AIRWAYS, INC.**

Attachment A

MR PETER GARRAMBONE  
PRESIDENT  
PLANET AIRWAYS INC  
4050 SW 11TH TERRACE  
FT LAUDERDALE FL 33315

AMER ASSOC OF ARPT EXECS  
4224 KING STREET  
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MR JOHN H CAS  
DEP CHIEF COU  
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800 INDEPENDEN  
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WINTHROP STIMSON PUTNAM  
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DIR OF REV ACCOUNTING  
AIR TRANSPORT ASSOC  
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OFFICE OF FLIGHT STDS  
FEDERAL AVIATION ADMIN  
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MR TIM CARMODY K-25  
DIR OFF OF AIRLINE INFO  
DEPT OF TRANSP  
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MR LOUIS CUSIMANO AFS-900  
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