

Served: November 10, 1998



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

Issued by the Department of Transportation
on the 10th day of November, 1998

Application of

**EXEC EXPRESS II, INC.
d/b/a ASPEN MOUNTAIN AIR and
d/b/a LONE STAR AIRLINES**

Docket OST-97-2978

for an exemption

Application of

**EXEC EXPRESS II, INC.
d/b/a ASPEN MOUNTAIN AIR and
d/b/a LONE STAR AIRLINES**

Docket OST-97-3037

for amendment of its section 41102 certificate

ORDER REVOKING EXEMPTION and DISMISSING APPLICATION

Summary

By this order, we are revoking our action of October 20, 1997, authorizing Exec Express II, Inc. d/b/a Aspen Mountain Air and Lone Star Airlines¹ (AMA) to expand its aircraft fleet. In addition, we are dismissing the application filed by AMA in Docket OST-97-3037 requesting amendment of its certificate.

Background

AMA holds a certificate authorizing it to engage in interstate scheduled passenger air transportation.² Primarily due to its weak financial position at the time the certificate was issued, the Department placed certain restrictions on the carrier's ability to expand. First, we limited the carrier's authority to the operation of aircraft having a maximum of 60 passenger seats or a maximum payload capacity of 18,000 pounds. Second, we required that, if AMA wanted to

¹ Although Exec Express II has registered both trade names with the Department, it has not operated under the Lone Star Airlines name since early 1998.

² See Order 94-9-5, issued September 7, 1994.

operate more than 11 aircraft, it must first file updated fitness information and have its fitness redetermined by the Department.

On October 7, 1997, AMA filed an application in Docket OST-97-2978 requesting an exemption from the 11-aircraft fleet restriction noted above. Specifically, the carrier requested that it be authorized to expand its fleet up to 18 aircraft and, further, that it be able to expand beyond 18 upon 45-days advance notice to the Department. On October 22, 1997, AMA filed an application in Docket OST-97-3037 requesting that the Department remove entirely the restriction limiting the number of aircraft that could be operated without a prior fitness review.³

At the time it filed its applications, AMA had a fleet of 14 aircraft,⁴ 12 of which were in use in its passenger air transportation operations.⁵ In making its request, AMA stated that it had been expanding its operations and that its future plans included the operation of approximately 18-20 aircraft. In addition, the carrier furnished information in support of its fitness to expand its operations. Among other things, AMA noted that, in 1996, the carrier had undergone an ownership change and that its new owner had access to significant financial resources which it was willing to invest in AMA to support its expansion plans. After reviewing the information provided by AMA and consulting with the Federal Aviation Administration (FAA), we concluded that the carrier was fit to expand its operations, and, on October 20, 1997, we orally granted AMA an exemption authorizing the carrier to increase its fleet up to 18 aircraft.⁶

Notwithstanding AMA's expectations that its expanded operations would prove profitable, they did not and, despite the infusion of funds by its owner, the carrier's financial situation deteriorated until, on August 7, 1998, AMA filed for Chapter 11 bankruptcy protection. Since then, it has severely scaled back its operations, including the return to its aircraft lessors of all but one of its prior aircraft, and the cessation of all scheduled passenger operations except for flights to and from seven essential air service points which it is providing until they are taken over by Big Sky Airlines.⁷

³ Neither the exemption application nor the restriction-removal application requested elimination of the 60-seat/18,000 pound payload limitation noted above.

⁴ At the time, AMA had seven 19-seat Fairchild Dornier Metros and seven 30-seat Fairchild Dornier DO-328s.

⁵ Thus, at the time of its exemption application, AMA had already exceeded the 11-aircraft limitation contained in its certificate, a violation of 49 U.S.C. 41101 and Order 94-9-5. In its defense, the carrier stated that it had undergone ownership and management changes since the restriction was imposed and that its new owners and managers were not fully aware of the fleet limitations contained in its certificate. Subsequently, by Order 97-10-20, issued October 27, 1998, AMA and the Department's Office of Aviation Enforcement and Proceedings agreed to issuance of an order requiring the carrier to cease and desist from future violations of 49 U.S.C. 41101 and Order 94-9-5.

⁶ At the same time that we granted the exemption, we denied that portion of the application that sought to expand beyond 18 aircraft on 45-days notice to the Department and took no action on its request that the aircraft limitation in its certificate be removed entirely. Instead, it was our intent to monitor AMA's expansion under the exemption authority granted to it before determining whether to allow the carrier to expand further.

⁷ At the present time, the carrier's fleet consists of one 19-seat Fairchild Dornier Metro. It is also wet leasing two aircraft from Merlin Express which it is using in conjunction with its essential air service obligations. However, in September, AMA advised the Department that it wanted to be relieved of its essential air service responsibilities at El Dorado/Camden, Jonesboro, Harrison, and Hot Springs,

Decision

We find that it is in the public interest to revoke the exemption previously granted to AMA to expand its fleet from 11 to 18 aircraft.

Our grant of the above exemption authority was based on AMA's circumstances at the time it was granted, not the least of which was the fact that its owner had access to significant financial resources which it pledged to AMA to support its expansion plans. Clearly, this is no longer the case. The carrier is now operating only one aircraft and it is not clear that it intends in the near future to operate additional aircraft within the limits allowed by its certificate. Moreover, and perhaps more importantly, in AMA's current circumstances we cannot now conclude that the carrier presently has the operational or financial capability to support the level of operations authorized by the exemption, or that it will be able to do so in the near future.⁸

Under the circumstances, we have decided to revoke the exemption authority discussed herein effective immediately.⁹ At the same time, we will dismiss the restriction-removal application filed in Docket OST-97-3037. The application has been on file for over a year and we would not be in a position to consider granting AMA expanded authority until, at a minimum, the carrier had demonstrated that its financial situation and its managerial and operational infrastructure warranted such expanded authority.¹⁰ Our actions here are taken without prejudice to AMA's filing for expanded authority at some future date should it choose to do so.

Arkansas, Enid and Ponca City, Oklahoma, and Brownwood, Texas, as soon as possible. By Order 98-10-9, issued October 7, 1998, the Department selected Big Sky to take over AMA's operations at those points. The most recent information provided to us indicates that the transfer of essential air service responsibilities from AMA to Big Sky will be completed by November 15. It is not clear what operations AMA will be providing after that date. To this end, we remind AMA that, should it cease its operations entirely, it is subject to the requirements of section 204.7 of our rules which provides that it must have its fitness redetermined prior to resuming or advertising such operations in the future; that rule further provides that if the carrier does not have its fitness redetermined and resume operations within one year of its cessation, its certificate authority will be revoked for dormancy.

⁸ We note that AMA is currently pursuing new investment that it anticipates will enable it to emerge from bankruptcy and continue operating. Thus, we would expect that any reorganized AMA will be materially different from the carrier as currently constituted. We would assume, for example, that the carrier may have substantially different ownership and management, and recent information indicates that the carrier's future plans may call for it to operate different aircraft and serve different markets than before. In this regard, we remind AMA that, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. Moreover, we remind AMA that, to the extent that its reorganization plans call for it to transfer its economic operating certificate to another person or entity, AMA must seek and obtain approval from the Department before it may do so (*see* 49 U.S.C. 41105).

⁹ Unlike certificate authority, which may only be amended, suspended, or revoked upon notice and hearing to the carrier, exemption authority granted by the Department may be revoked at any time without notice where circumstances warrant.

¹⁰ In view of AMA's financial condition, and because it has reduced its operation to only a single aircraft, we intend to monitor its re-equipment plans very closely under our responsibilities to assure all air carriers'

ACCORDINGLY,

1. We revoke the exemption authority granted on October 20, 1997, authorizing Exec Express II, Inc. d/b/a Aspen Mountain Air and Lone Star to expand its aircraft fleet up to 18 aircraft.
2. We dismiss the application for a certificate amendment filed by Exec Express II, Inc. d/b/a Aspen Mountain Air and Lone Star Airlines in Docket OST-97-3037.
3. We will serve a copy of this order on the persons listed on Attachment A.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

The actions taken herein are effective immediately and the filing of a petition for review shall not preclude their effectiveness.

By:

JOHN V. COLEMAN
Director
Office of Aviation Analysis

(SEAL)

continuing fitness. Thus, we expect AMA to apprise us in advance of any plans to acquire additional aircraft and to substantiate its means of financing and supporting such acquisitions.

SERVICE LIST FOR EXEC EXPRESS II, INC. d/b/a ASPEN MOUNTAIN AIR

Mr. Ronald Stone, Chairman & President
Exec Express, II, Inc. d/b/a
Aspen Mountain Air
2080 N. Highway 360, Ste 400
Grand Prairie Texas 75050

Mr. Peter J. Lynch, Assistant General
Counsel for Enforcement, AGC-300
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, D.C. 20591

Mr. Quentin Smith, Manager
Air Transportation Div., AFS-200
Office of Flight Standards
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, D.C. 20591

Mr. Louis Cusimano, Manager
Flight Standards Certification Program
Office, AFS-900
Office of Flight Standards
Federal Aviation Administration
45005 Aviation Dr., Ste 131
Dulles, Virginia 20166-7537

Mr. Randolph Loveless
FAA Flight Standards District Office
2260 Alliance Blvd.
Fort Worth, Texas 76117-4300

Manager
Flight Standards Div., ASW-200
FAA Southwest Region Hq.
2601 Meacham Field
Fort Worth, Texas 76137-4298

Ms. Lynette Wood
Assistant Chief Counsel, ASW-7
FAA Southwest Region Hq.
2601 Meacham Field
Fort Worth, Texas 76137-4298

