



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

Issued by the Department of Transportation  
on the 14<sup>th</sup> day of October, 1998

Served: October 14, 1998

Fitness determination of

**AIR KETCHUM, IDAHO, INC.**

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

**ORDER TO SHOW CAUSE  
PROPOSING ISSUANCE OF COMMUTER AIR CARRIER AUTHORITY**

**Summary**

By this order, we tentatively find that Air Ketchum, Idaho, Inc. (Air Ketchum) is fit to conduct commuter air carrier operations using one aircraft with no more than nine passenger seats.

**Background**

Section 41738 of Title 49 of the United States Code (Transportation) (“the statute”) directs 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). 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.<sup>1</sup> 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 financial resources sufficient to commence the operations proposed without posing an undue risk to consumers, and (3) will comply with the statute and regulations imposed by federal and state agencies. We must also determine that an applicant is a U.S. citizen.

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<sup>1</sup> Part 204 of our rules sets forth the evidence we need to make fitness findings.

On June 23, 1998, Air Ketchum, Idaho, Inc., submitted an application to conduct commuter operations.<sup>2</sup> Upon review of the information in the application and the safety and compliance information on the carrier received from the FAA and the National Transportation Safety Board (NTSB), we tentatively conclude that the applicant is a U.S citizen and has met the fitness test to conduct commuter operations. We will, however, give any interested persons an opportunity to show cause why we should not adopt as final the tentative determination that Air Ketchum is fit, willing, and able to provide commuter service.

### **The Carrier**

Air Ketchum, based in Hailey, Idaho, is wholly owned by Mr. Leonard H. McIntosh.<sup>3</sup> The company received authority to operate as an air taxi under Part 298 of our rules in May 1997 and has been conducting such on-demand operations ever since. At present, its primary air taxi operations are conducted in the inter-mountain West using one 4-seat Beechcraft Baron 58P aircraft.

If granted the commuter air carrier authority requested here, Air Ketchum plans to commence scheduled passenger operations between Hailey and Boise using its existing Baron 58P aircraft.<sup>4</sup>

### **Managerial Competence**

In addition to being Air Ketchum's sole shareholder, Mr. Leonard McIntosh also serves as its President and Director of Operations.<sup>5</sup> Mr. McIntosh has been engaged in real estate development and management activities since 1965. In addition, he has also owned and operated various air taxi and fixed-base operations including Jet West and Aviation Services. In addition to fulfilling his duties with Air Ketchum, Mr. McIntosh will continue to manage the assets of his real estate and other holdings. He estimates that he will spend approximately 50 percent of his time on Air Ketchum business.

Jack B. Northcott will be Air Ketchum's Chief Pilot. Between 1986 and 1994, Mr. Northcott served as a pilot for several companies, including Sun Valley Aviation and Bob's Aircraft, both air taxi operators. Since 1994, he has worked as a shop foreman for a company that designs and manufactures home appliances and as an on-call pilot for two privately-owned aircraft based in Hailey. Upon Air Ketchum's receipt of commuter authority, Mr. Northcott will be employed by

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<sup>2</sup> Subsequently, Air Ketchum supplemented its application with additional fitness information.

<sup>3</sup> Air Ketchum was organized as a corporation under the laws of the State of Idaho in 1996. Mr. McIntosh purchased the company in June 1998.

<sup>4</sup> Prior to being authorized to provide commuter service, Air Ketchum must obtain amended Operations Specifications from the FAA authorizing it to conduct scheduled passenger air transportation as a commuter, and must meet the insurance requirements for commuter operations as contained in Part 205 of our regulations.

<sup>5</sup> Mr. McIntosh holds an FAA-issued Airline Transport Pilot license.

the company on a full-time basis. Mr. Northcott holds an FAA-issued Airline Transport Pilot license and has over 4,000 total flight hours.

Air Ketchum's Director of Maintenance is Mr. Leonard W. Miller. Mr. Miller has been employed since 1993 as Director of Maintenance for Jet West, an FAA certified repair station. He will continue his employment with this company while devoting 20 percent of his time to his duties with Air Ketchum. Mr. Miller's aviation career spans many years, during which time he has worked for airlines operating both large and small aircraft. Some of the positions he has held include Director of Maintenance and Chief Inspector for Great American Airways (1979-1983), and Senior Maintenance Representative for Evergreen International Airlines (1978-1979), as well as maintenance positions with general aviation and air taxi operators. Mr. Miller holds an FAA-issued Airframe and Powerplant Mechanic license.

We note that only one of the three key management/technical personnel noted above is expected to be available to the carrier on a full-time basis.<sup>6</sup> As discussed in the **Operating and Financial Position** section below, however, the operations proposed by Air Ketchum, at least initially, are very limited in scope (10 weekly round trips between Hailey and Boise). Moreover, the FAA has also reviewed the qualifications of Messrs. McIntosh, Northcott, and Miller and has approved all of them to hold their respective positions with Air Ketchum. Further, the FAA has stated that the part-time participation of Messrs. McIntosh and Miller is acceptable at this time.<sup>7</sup>

In light of these factors, we tentatively find that Air Ketchum's current management team is sufficient to oversee the limited operations it proposes. However, should the company propose to expand its commuter operations to include the operation of larger or additional aircraft, our fitness finding might no longer apply. Therefore, we intend to (1) restrict Air Ketchum's commuter authority to aircraft with a passenger capacity of 9 passenger seats or less, and (2) require that Air Ketchum notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to implementing commuter service with any aircraft beyond the one proposed here. This will allow us to monitor the company's management oversight relative to any growth in its operations.

### **Operating Proposal and Financial Condition**

If granted the commuter air carrier authority requested here, Air Ketchum plans to provide two daily round-trips, five days a week, between Hailey and Boise, Idaho, using a 4-seat Beechcraft Baron 58P aircraft.

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<sup>6</sup> Air Ketchum also has a Director of Training, Colin Warner, who is a full-time employee of the carrier.

<sup>7</sup> Before authorizing a carrier to conduct scheduled passenger operations, the FAA 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.

Air Ketchum supplied historic financial statements which included its corporate income tax forms for the calendar year 1997, as well as a balance sheet and six month income statement for the period ending June 30, 1998. It also furnished detailed projections of anticipated operating revenues and expenses for its first year of scheduled passenger operations, as well as a listing of its expected pre-operating expenses. We have examined these forecasts and find that they appear to be reasonable for the services proposed.

A review of the company's financial statements indicates that Air Ketchum has no outstanding debt obligations and has positive stockholder's equity. The company's business activities for the 18 months ending June 30, 1998, resulted in a small profit. The company states that it has nearly completed the steps necessary to obtain its FAA operating authority and that it has already paid most of the pre-operating expenses it expects to incur. Further, Air Ketchum has provided evidence that it has a bank line-of-credit in the low-six figures, which is sufficient to meet our financial fitness criteria.<sup>8</sup>

In consideration of the above, we tentatively conclude that Air Ketchum will have access to financial resources sufficient to enable it to commence its proposed operations without posing an undue risk to consumers or their funds.

### **Compliance Disposition**

The applicant states that there have been no charges of fraud, felony or antitrust violations, or of unfair, anticompetitive or deceptive business practices filed against it or any of its key personnel, nor are there any outstanding judgments against any of these parties. Air Ketchum further states that neither it nor any of its key personnel are the subject of any pending investigations, formal complaints or enforcement actions regarding compliance with the statute or of the Federal Aviation Regulations.

A search of our files found no record of problems involving the company, its owner, or its key personnel. Further, a search of FAA and NTSB records confirms that Air Ketchum has had no FAA enforcement actions taken against it, nor has it been involved in any accidents or incidents. The FAA has advised us that the applicant has nearly completed the steps necessary to obtain amended operations specifications authorizing the proposed scheduled passenger operations, and that the agency has no objections to the Department's grant of Air Ketchum's request for commuter authority.

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<sup>8</sup> To meet the Department's financial 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.

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

### **CITIZENSHIP**

49 U.S.C. 41102 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). 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.

Air Ketchum is wholly owned by Mr. Leonard H. McIntosh. Mr. McIntosh and Air Ketchum's other key personnel are citizens of the United States. Further, the carrier has provided an affidavit stating that it is a U.S. citizen within the meaning of section 40102(a)(15). Moreover, 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 Air Ketchum is a U.S. citizen and that it is fit, willing, and able to provide the scheduled passenger service it proposes as a commuter air carrier.

### **OBJECTIONS**

We will give interested persons 14 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 7 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 with respect to Air Ketchum's fitness and commuter authority.

### **EFFECTIVE COMMUTER AUTHORIZATION CONDITIONS AND LIMITATIONS**

In the event that we find Air Ketchum 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 that Air Ketchum has received amended Operations Specifications from the FAA authorizing it to conduct commuter operations, and evidence of liability insurance coverage that meets the requirements of section 205.5(b) of our rules.

Our conclusion as to Air Ketchum's fitness is based on the operating plans described in its application. These plans call for Air Ketchum to utilize a single four-seat aircraft in its commuter operations. Our fitness findings might no longer apply if the company were to substantially change the scope of its operations through the introduction of larger aircraft. Therefore, we propose to limit any commuter authority issued to Air Ketchum to operations with aircraft that can be operated under Part 135 of the FARs (that is aircraft having nine passenger seats or less). Should Air Ketchum later decide to operate larger aircraft, it must first be determined fit for such operations.

Furthermore, we remind Air Ketchum 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. As noted earlier, we intend to require the applicant to notify us at least 45 days prior to any planned expansion of its commuter operations beyond the one aircraft proposed here and provide updated fitness information of its fitness to do so. In addition, should Air Ketchum propose any other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our regulations.<sup>9</sup> The compliance of the carrier with this requirement is essential if we are to carry out our responsibilities under the statute.<sup>10</sup>

#### **ACCORDINGLY,**

1. We direct all interested persons to show cause why we should not issue an order finding that Air Ketchum, Idaho, Inc., is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier using aircraft with no more than nine passenger seats.
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 Galvin Coimbre, Air Carrier Fitness Division, X-56, Department of Transportation, 400 7th Street, S.W., Washington,

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<sup>9</sup> Air Ketchum 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 Air Ketchum 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>10</sup> We also remind Air Ketchum 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.

D.C. 20590, and serve them on all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections will be due within 7 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 Air Ketchum, Idaho, Inc., a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.<sup>11</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>11</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

**SPECIMEN**

Attachment



Terms, Conditions, and Limitations

**AIR KETCHUM, IDAHO, INC.**

is authorized to engage in scheduled passenger air transportation operations as a commuter air carrier.

This authority is subject to the following provisions:

(1) The authority to conduct scheduled passenger operations 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 it continues to have 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) or issue tickets for scheduled passenger operations, and any advertisement/or listing of flights 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 requirements of 14 CFR Part 298 and any other regulations prescribed by the Department of Transportation for the services authorized here, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(4) The holder may not operate aircraft designed to have a maximum passenger capacity of more than 9 passenger seats.

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

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

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render this authority 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 authority.

(8) The holder shall maintain in effect at all times with the Department of Transportation current information on OST Registration Form 4507.

(9) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(10) 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.

(11) In the event that the holder does not commence actual flying operations as a commuter air carrier under this authority within one year of the date of the Department's determination of its fitness, its commuter authority shall be revoked for dormancy. Further, in the event that the holder commences but subsequently ceases all scheduled passenger operations, the authority granted here 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 AIR KETCHUM, IDAHO, INC.**

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