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

Issued by the Department of Transportation
on the 29th day of March, 1999

Application of **ACCESSAIR HOLDINGS, INC.** for a certificate of public convenience and necessity under 49 U.S.C. 41102 to engage in interstate scheduled air transportation of persons, property, and mail	**Docket OST-96-1926**

ORDER ISSUING EFFECTIVE CERTIFICATE AND CONFIRMING ORAL ACTIONS

Summary

By this order we (1) disclaim jurisdiction over the transfer of the certificate held by Accessair Holdings, Inc., to Accessair, Inc., both Iowa corporations;[1] (2) find that Accessair continues to be fit, willing, and able to provide interstate scheduled air transportation pursuant to certificate authority issued under 49 U.S.C. 41102; (3) confirm our oral actions taken with respect to Accessair; and (4) reissue to Accessair a certificate authorizing it to engage in interstate scheduled air transportation of persons, property, and mail to reflect its effective date.

Background

By 97-7-1, served July 8, 1997, the Department found Accessair fit, willing, and able to conduct interstate scheduled air transportation of persons, property, and mail and issued to it a certificate authorizing such operations. Effectiveness of this certificate was

[1] In September 1998, Accessair Holdings created a wholly-owned subsidiary, Accessair, for the purpose of this subsidiary becoming the operating airline. The company failed to notify the Department of this corporate reorganization and to request transfer of the section 41102 certificate from Accessair Holdings to Accessair. Nonetheless, our review of this transaction found that it did not impact negatively on the ownership or fitness of the airline entity and, hence, we disclaim jurisdiction over the transfer of the certificate authority previously issued to Accessair Holdings to Accessair. Hereinafter, we will refer to both companies interchangeably as Accessair.

conditioned upon, among other things, the company's successful completion of its initial financing and the Federal Aviation Administration Part 121 certification process. Furthermore, consistent with section 204.7 of the Department's Economic Regulations (14 CFR 204.7), Accessair had one year from the date of issuance of Order 97-7-1 (that is, until July 8, 1998) to meet the requirements for receipt of effective certificate authority and commence scheduled passenger operations.[2] Failure to do so on the part of Accessair would result in the loss of its certificate authority, absent grant of additional time by the Department.

On July 2, 1998, and on subsequent dates, Accessair filed requests for extensions of time in which to become operational. In doing so, Accessair demonstrated that it had received substantial financial investments for its proposed operations and was making reasonable progress toward completing its certification process with the FAA. Therefore, we granted Accessair several extensions of time, through February 7, 1999.[3]

On February 1, 1999, Accessair submitted to the Department evidence that it had been issued an Air Carrier Certificate and Operations Specifications under Part 121 by the FAA. The company requested that its authority be made effective immediately, rather than waiting for the standard six (business) day waiting period to lapse. Accessair had previously fulfilled all of the other requirements for receipt of effective certificate authority, including providing detailed information on the fitness-related changes it had undergone since the Department's July 1997 order finding it fit. As summarized below, the information before us demonstrated that the company continued to be fit to conduct the operations at issue, and therefore, we granted the request of Accessair orally on February 1, and made the company's certificate of public convenience and necessity effective on that date. We confirm that action here.

FITNESS

Prior to allowing Accessair's certificate to become effective, the Department evaluated its continuing fitness using the same three-part test we apply to companies seeking new certificate authority. The three areas of inquiry that must be addressed in order to determine a company's fitness are whether the carrier (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence the proposed operations 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 find that the applicant is a U.S. citizen.

Ownership and Management

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[2] Section 204.7 of our rules provides, among other things, that 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 fitness.

[3] Two extensions of 90-days, one of which was based on conditions which Accessair subsequently satisfied, were granted by letter dated August 11, l998, and an extension of 30 days was granted orally on January 5, 1999. We confirm the latter action by this order.

At the time of its initial fitness determination, Accessair was owned by Mr. D. Roger Ferguson (65.9 percent) and Richard Musal (15.6 percent) with the remaining 18.5 percent of Accessair's stock distributed among several companies, civic organizations, and one individual. Although each of the initial majority stockowners continues to hold stock in the company, their ownership percentages have changed. Currently, ownership is divided among Mr. Ferguson (23 percent), Midwest Capital Group[4] (11 percent), and Mr. Musal (5.3 percent), with the remaining 66 percent of its voting stock being widely held.

Initially, Accessair's sole director was Roger Ferguson. Currently, Mr. Ferguson remains a director, serving as Chairman, but the size of Accessair's Board of Directors has increased to eight: Frank Rosenberg, a businessman; Stanley Bright, Chairman, President, and Chief Executive Officer of MidAmerican Energy Holdings Company; James Davis, an attorney; Timothy Gibson, Chief Executive Officer of FBL Financial Group; Joseph O'Brien, an executive with O'Brien Steel Service Company; John Ruan III, President of Ruan Incorporated; Gerald Shaheen, Group President of Caterpillar; and Fred Weitz, President and Chief Executive Officer of Essex Meadows, Inc.

Accessair has also undergone changes in its senior management team.[5] Roger Ferguson remains its President, Chairman, Chief Executive Officer, and has assumed, temporarily, the role of Senior Vice President of Marketing. Richard Musal continues to serve as Accessair's Senior Vice President and Chief Financial Officer, Patrick Levi remains with the company as Senior Vice President of Maintenance and Engineering, and Clark Keller still serves as its Director of Safety.[6] New to Accessair are Marino Johannsson as Senior Vice President of Operations/Director of Operations, Ronald Ruble as Chief Pilot, Stephen Schmees as Director of Maintenance, and Brian Lundquist as Chief Inspector.

Mr. Johannsson, an Airline Transport Pilot, has over 25 years of senior management aviation experience that includes serving as President of Air One Corporation, General Manager and Director of Operations for, among others, Grand Airways, Transtar Airlines, and Casino Express Airlines. Mr. Ruble, an Airline Transport Pilot with over 15,000 hours of flight time, joined Accessair possessing 32 years of aviation experience that includes serving as a captain and pilot with various air carriers including Polar Air Cargo, MarkAir, and Air Florida. Mr. Schmees, an Airframe and Powerplant Mechanic, has served in the aviation maintenance field for eight years holding positions that included inspector, lead maintenance mechanic, and airframe and powerplant mechanic with

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[4] Midwest Capital Group is a wholly-owned subsidiary of MidAmerican Energy Holdings Company, Inc., a publicly-held utility holding company headquartered in Des Moines and a U.S. citizen.

[5] Accessair has established an Executive Committee to perform the functions of a Chief Operating Officer. The committee will consist of Mr. Ferguson and the Senior Vice Presidents of Finance, Operations, Marketing, and Maintenance and Engineering and will meet daily to develop solutions to particular interdepartmental issues.

[6] The qualifications Messrs. Ferguson, Musal, Levi, and Keller were appraised in connection with the company's fitness determination (*see* Order 97-6-15).

Western Pacific Airlines and Dynair Technical Service of Arizona. Mr. Lundquist, an Airframe and Powerplant Mechanic with 14 years of aviation maintenance experience, joined Accessair after having worked for Express Airlines I for nine years as hangar foreman and later Director of Maintenance. His other maintenance experience includes employment as a maintenance inspector and flight mechanic with Midwest Express Airlines.

The changes in the company's ownership and management noted above do not alter our finding in Order 97-7-1 that Accessair has demonstrated that it has the management skills and technical ability to conduct the operations authorized by its certificate.[7]

Operating Proposal and Financial Condition

Accessair's operating proposal changed since its initial fitness determination. Initially, the company's plan was to begin offering a total of 13 scheduled round-trips between Des Moines and the Quad Cities (Davenport and Bettendorf, Iowa, and Moline and Rock Island, Illinois), and the cities of Wichita, Los Angeles, and New York using three 117-seat Boeing 737-200A aircraft. During the first year, Accessair planned to expand its operations to Wichita and to add service between Des Moines and the Quad Cities and Washington, D.C., and San Francisco with the addition of three more B-737 aircraft.

The company's revised initial plan will be service from Des Moines to Los Angeles (nonstop) and New York LaGuardia (one stop in Moline and Peoria) using two B-737-200 aircraft. In addition, Accessair plans to add a third B-737 aircraft in the latter part of its first year of operations.

As a result of the changes in its operating plans, Accessair furnished a revised estimate of the pre-operating costs for its proposed operations, and a revised first year operating

[7] 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 has found each of the noted individuals to be qualified for their positions with Accessair.

cost forecast. Based on these forecasts, Accessair required access to approximately $6.4 million to meet the Department's financial fitness criteria.[8]

Accessair furnished letters dated January 22, 1999, from Bankers Trust, West Des Moines State Bank, and Merrill Lynch verifying that it had a total of $4.1 million on deposit in its accounts. In addition, Accessair has provided a summary of further available funding that included, among other things, receivables, prepaid expenses, and training grants that total approximately $2.3 million.

In light of Accessair's revised operating plan and available funding, we concluded that the company had sufficient financial resources available to it to enable it to commence its proposed operations without posing an undue risk to consumers or their funds.

Compliance Disposition

We found in Order 97-7-1 that Accessair had 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 would be followed. None of the ownership or management changes noted above have had any negative impact on Accessair's overall compliance disposition and, therefore, the findings of Order 97-7-1 with respect to compliance disposition remain valid.

CITIZENSHIP

49 U.S.C. 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.

As noted earlier, Accessair is wholly owned by Accessair Holdings whose principal owners are Messrs. Ferguson and Musal, and Midwest Capital Group, with the remainder of the stock widely held. Accessair has affirmed that it, Accessair Holdings, and its new key personnel are U.S. citizens. Further, our review of Accessair's citizenship has uncovered no reason to suggest that control of the carrier rests with non-U.S. citizens.

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[8] In evaluating a company'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 expenses 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 standard on one-quarter of the first year's operating cost forecast. In calculating available resources, projected revenues may not be used.

Based on the above, we conclude that Accessair continues to be a citizen of the United States and is fit, willing, and able to conduct the interstate scheduled passenger operations authorized by its certificate.

CERTIFICATE CONDITIONS AND LIMITATIONS

We will take this opportunity to reissue to Accessair the certificate previously issued by Order 97-7-1 to reflect its effective date and the transfer of authority from Accesair Holdings to Accesair, Inc.

As stated in Order 97-7-1, our findings regarding Accessair's fitness were based on our evaluation of its first year operating plan which utilized six aircraft and on its initial funding plan. Therefore, we required that Accessair notify the Department in writing at least 45 days in advance of undertaking any expansion that would increase its fleet size to a total of more than six aircraft and demonstrate its fitness for such operations.

In light of Accessair's new base plan of operations and available funding as discussed in the **Operating Proposal and Financial Condition** section of this order, the findings in Order 97-7-1 regarding Accessair's ability to operate up to six aircraft no longer apply. Therefore, we will require that should Accessair propose to operate more than three B-727 aircraft, 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 any additional aircraft. Furthermore, should the carrier propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.[9] The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).

To aid the Department in monitoring the fitness of new air carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report to the Air Carrier Fitness Division within 45 days following the end of the first year of actual flight operations. 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 or part-time employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current operations during the next year, current financial statements,[10] and a listing of current senior management and key technical

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[9] 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. Accessair 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 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.

[10] 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 date.

personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

ACCORDINGLY, Acting under authority assigned by the Department in its regulations, 14 CFR 385.12:

1. We disclaim jurisdiction over the transfer of the interstate scheduled air transportation certificate issued to Accessair Holdings, Inc., by Order 97-7-1 to Accessair, Inc., both Iowa corporations.

2. We find that Accessair, Inc., continues to be fit, willing, and able to engage in interstate scheduled air transportation of persons, property, and mail.

3. We confirm our oral action of January 4, 1999, that granted Accessair, Inc., a 30-day extension of its January 8, 1999, revocation-for-dormancy date pursuant to section 204.7 of our regulations.[11]

4. We confirm our oral action of February 1, 1999, making the certificate authority of Accessair, Inc., effective on that date.

5. We reissue in the name Accessair, Inc., the certificate issued to Accessair Holdings, Inc., authorizing it to engage in interstate scheduled air transportation of persons, property, and mail by Order 97-7-1 in the form and subject to the Terms, Conditions, and Limitations attached.

6. Should Accessair, Inc., propose to utilize more than three aircraft, we direct it to notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to placing the additional aircraft into service.

7. We direct Accessair, Inc., to submit to the Air Carrier Fitness Division a first year progress report within 45 days of the end of its first year of scheduled passenger operations.

8. We will serve a copy of this order on the persons listed in Attachment A.

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

The actions confirmed in this order were effective when taken and the filing of a petition for review shall not alter their effectiveness.

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[11] As noted earlier, Accessair's original revocation-for-dormancy date was July 8, 1998. However, this date was extended until January 8, 1999.

By:

JOHN V. COLEMAN
Director
Office of Aviation Analysis

(SEAL)

An electronic version of this document is available on the World Wide Web at http://dms.dot.gov//reports/reports_ aviation.asp

Certificate of Public Convenience and Necessity
for
Interstate Air Transportation

(as reissued)

This Certifies That

ACCESSAIR, INC.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

Issued by Order 99-3-31
On March 29, 1999
Effective on February 1, 1999

John V. Coleman
Director
Office of Aviation Analysis

*Reissued by
Order 99-3-31

Attachment

Terms, Conditions, and Limitations

ACCESSAIR, INC.

is authorized to engage in interstate 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 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.

(2) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.

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

(4) 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.

(5) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

*** This certificate is being reissued to reflect its transfer from Accessair Holdings, Inc., to Accessair, Inc., and its effective date.**

(6) 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.

(7) 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.

(8) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," 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.