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Order 99-8-12



**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 August, 1999

Application of

JETBLUE AIRWAYS CORPORATION

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

Served: August 16, 1999

Docket OST-99-5616

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

Summary

By this order, we tentatively find that JetBlue Airways Corporation is a citizen of the United States and is fit, willing, and able to provide interstate scheduled air transportation of persons, property, and mail and should be issued a certificate 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 scheduled 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's 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 State agencies. We must also find that the applicant is a U.S. citizen.

On April 30, 1999, New Air Corporation, located in New York, filed an application in Docket OST-99-5616 for a certificate to provide interstate scheduled air transportation of persons, property, and mail pursuant to section 41102 of the Statute. The applicant accompanied its application with the fitness information required by section 204.3 of our regulations.¹ On July 14, the applicant notified the Department of a change in its corporate name to "JetBlue Airways Corporation" and requested that its certificate be issued in that name. Hereafter in this order, we will refer to the applicant by the name "JetBlue." If its application is approved, JetBlue intends to institute scheduled passenger service in the winter of 1999-2000 between John F. Kennedy International Airport ("JFK") in New York and various points primarily along the East Coast of the United States utilizing A-320 aircraft.²

On May 28, an answer opposing JetBlue's application was filed in Docket OST-99-5616 by the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM"). On June 7, JetBlue filed a motion to file an unauthorized document and a reply to IAM's answer. On July 2, IAM filed a motion for leave to file and a response to the applicant's reply, and, on July 14, JetBlue filed a motion and an answer to IAM's response.³

No other issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that JetBlue is a U.S. citizen and is fit, willing, and able to operate its proposed interstate scheduled passenger service. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

The Company

¹ The applicant asked for confidential treatment of stockholder and employment agreements, and various other capitalization and corporate documents, as well as copies of the FAA licenses held by certain of its key personnel. By staff action in a letter dated June 15, 1999, the Department granted the applicant's request, in part, and directed that certain material be redacted and filed in the public docket in this proceeding, which the applicant did on June 21. The applicant also filed information supplementing its application on May 21, June 17 and 18, and July 14.

² On February 5, 1999, JetBlue filed an application in Docket OST-99-5085 for an exemption from the High Density Rule (14 CFR Part 93, Subparts K and S), which is applicable at JFK during the 3:00 p.m. to 7:59 p.m. high-operations period. JetBlue seeks new-entrant slot exemptions in order to conduct 75 daily operations during that time period, which operations are to be phased in over three years. This matter, including related environmental issues, will be treated in a separate order.

³ We will grant IAM's and JetBlue's motions. The substance of IAM's objections and the applicant's responses is discussed below under the heading "**Answers of IAM.**"

JetBlue was organized as a Delaware corporation on August 24, 1998. Approximately 28 individuals and entities own shares of its preferred and/or common stock. Those with the largest holdings (ten percent or more) of JetBlue voting stock and the percentage of total voting power exercisable by each are as follows: (1) Chase New Air Investors (GC), LLC (18.05 percent); (2) Neeleman Holdings, LC (15.31 percent); (3) Weston New Air Holdings, LLC (12.50 percent); (4) SFM Domestic Investments, LLC (12.03 percent); and (5) Quantum Industrial Partners, LDC (11.10 percent). The remaining shareholders own an aggregate of 31.01 percent of the voting stock.⁴

Seven members of JetBlue's nine-member board of directors have thus far been selected. Five of these individuals are principals, partners, or managing directors of JetBlue's major investors; the sixth is Mr. David G. Neeleman, who, in addition to being a principal investor, is also Chief Executive Officer of JetBlue; and the seventh is an independent director.⁵

Managerial Competence

Mr. David G. Neeleman, JetBlue's Chief Executive Officer, gained his aviation experience principally during his ten-year affiliation with Morris Air Service/Morris Air Corporation ("Morris"), a public charter operator and then-certificated air carrier based in Salt Lake City.⁶

⁴ Weston New Air Holdings is a limited liability company whose members are limited partnerships which have non-U.S. partners. Therefore, Weston cannot be considered a U.S. citizen. Quantum Industrial Partners, LDC, being a Cayman Islands Limited Duration Company, also is not a U.S. citizen. The other two non-U.S.-citizen beneficial holders of JetBlue voting stock are Mass Mutual Corporate Value Partners, LDC, a Cayman Islands Limited Duration Company, with a 0.90 percent voting interest, and Mr. Mark Hill, a citizen of Canada, with a 0.24 percent voting interest. Thus, with Weston's 12.50 percent and Quantum's 11.10 percent voting interest, the total percentage of JetBlue voting stock that is not under the control of U.S. citizens is 24.74 percent. In addition to their shares of voting stock, Weston and Quantum own 39.85 percent and 35.47 percent, respectively, of JetBlue's non-voting stock. These non-voting share holdings represent 7.33 and 6.52 percent, respectively, of JetBlue's total outstanding stock. Thus, Weston's and Quantum's total holdings of both voting and non-voting stock are 19.83 percent and 17.62 percent, respectively. The total percentage of JetBlue stock (voting and non-voting) held by non-U.S. citizens is 38.59 percent.

⁵ The five investor-representative directors are Mr. Michael P. Lazarus (Chairman), co-founder and Managing Partner, Weston Presidio Capital, San Francisco; Mr. Thomas A. Patterson, Principal, Weston Presidio Capital; Mr. Neal Moszkowski, Partner, Soros Fund Management, LLC, and Soros Private Equity Partners, LLC, New York; Mr. Frank V. Sica, Managing Director, Soros Fund Management; and Mr. David L. Ferguson, General Partner, Chase Capital Partners, Vail, Colorado. The independent director is Mr. Joel C. Peterson, founder and Chairman of Peterson Ventures of Dallas and Salt Lake City, a real estate development, management and investment enterprise which provides equity and venture capital.

⁶ Morris's certificate authority was originally issued to Morris Air Service, Inc., by Order 92-11-34 and then was reissued to Morris Air Corporation. The carrier began scheduled flights in February 1993. On December 31, 1993, it was acquired by Southwest Airlines and continued to operate until Morris's operations were integrated into Southwest's in April 1995. Morris's certificated authority was revoked for dormancy by Order 96-4-10 on April 11, 1996.

Mr. Neeleman joined Morris in 1984 as Executive Vice President, was named President in 1988, co-founded its airline operation in 1992, and led the carrier until its acquisition by Southwest Airlines at the end of 1993. In 1995, he founded Open Skies, Inc., an airline reservations system in Salt Lake City, and served as its Chief Executive Officer for four years. Mr. Neeleman is also a minority shareholder in and a director of West Jet Airlines, a Canadian air carrier of which he was a founder, and Indigo Aviation, an aircraft leasing enterprise.

Mr. David Barger has been named President and Chief Operating Officer of JetBlue. During his 16-year aviation career, Mr. Barger worked for New York Air in positions ranging from customer service agent to Director of Stations. At Continental Airlines, following New York Air's merger with that carrier, Mr. Barger held increasingly responsible managerial positions including Director of Customer Service, Director of Operations Control & International Operations, and Vice President-Newark Hub.

Mr. Thomas E. Kelly is JetBlue's Executive Vice President and General Counsel. For nine years beginning in 1990, Mr. Kelly was employed in the same capacities first with Morris and then with Open Skies. Previously, he was affiliated for eight years with the law firm Holme Roberts & Owen in Salt Lake City.

Mr. John D. Owen, who has joined the applicant as Executive Vice President and Chief Financial Officer, has spent nearly 20 years in airline finance and operations planning and analysis. He was employed for four years with American Airlines as a financial analyst and for 15 years with Southwest Airlines, 14 of those years as Treasurer and the last five months as Vice President for Operations/Planning & Analysis. He also served as Vice President of Finance with Metro Hotels, Inc., in Dallas.

Mr. Alfred T. Spain has been selected by JetBlue as its Vice President and Director of Operations. He is certified by the FAA as an Airline Transport Pilot, Flight Engineer, Flight Instructor, and Aircraft Dispatcher, has an A-320 type rating, and has accumulated over 15,300 hours of flight time. Mr. Spain has worked for over 35 years as a pilot, instructor, chief pilot, and check airman for the U.S. Army and a number of private organizations. He joined People Express in 1984 as Flight Manager, and transferred to Continental Airlines/Air Micronesia in 1987 as check airman and Chief Pilot for the Pacific Division in Guam. He moved to Continental Micronesia in 1992 where he was employed until 1998 as Vice President of Flight Operations.

Mr. Troy J. Menken has accepted a position with JetBlue as its Vice President, Technical Operations and Director of Maintenance. Over the past 16 years, Mr. Menken has held maintenance managerial positions with several certificated air carriers, including America West Airlines (Manager of Reliability and Maintenance Inspection Program Development), Morris (Director of Maintenance and Director of Technical Services), Champion Air (Vice President-Technical Services), and Winair (Vice President, Technical Services). Mr. Menken holds an Airframe and Powerplant Mechanic Certificate issued by the FAA.

Mr. Michael R. Clark has joined JetBlue as its Chief Pilot. In his 30-year aviation career, Mr. Clark has worked as a pilot, check airman, and flight instructor for such certificated air

carriers as Western Pacific Airlines and, most recently, Pro Air. He spent 20 years with the FAA as an airman certification inspector pilot at Indianapolis and as a principal geographic inspector at Cleveland. Mr. Clark holds an Airline Transport Pilot Certificate from the FAA, is type-related on A-320 aircraft, and has accumulated over 9,200 hours of flight time.

The applicant also discussed its intention to have its own personnel provide reservations services, airframe and powerplant maintenance, and passenger and ground handling at its JFK base. At out-stations, the company plans to provide its own passenger handling services and to use outside contractors for maintenance, security, and ground handling services. Station operations will report to a Director of Airport Operations and security personnel will be supervised by a Director of Security.

In view of the experience and background of the applicant's key personnel,⁷ we tentatively conclude that JetBlue has demonstrated that it has both senior management and key technical supervisors who have the managerial skills and technical ability to conduct its proposed service. Moreover, the FAA has advised us that all of the applicant's key technical personnel have been found qualified to hold their respective positions.⁸

Financial Plan and Operating Proposal

⁷ In addition to the individuals noted above, JetBlue has selected other individuals who appear to be well qualified to hold their respective managerial positions with the company, including:

--Mr. Robert C. Land, Vice President for Government Affairs and Associate General Counsel, who has seven years of experience in the fields of transportation economics, labor, law and regulation, including three years at the Department of Transportation;

--Mr. Christopher L. Collins, Vice President for System Operation, who gained 16 years of experience in airline operations management with People Express Airlines, Continental Airlines, and Continental Micronesia, and is an FAA-certified Aircraft Dispatcher;

--Mr. Usto Schulz, Director of Safety and Certification Project Manager, who has more than 50 years of experience in airline operations and FAA certification, including two years as General Manager of Morris and eight years in managerial positions with the FAA's Flight Standards Service, and who holds an FAA Airline Transport Pilot Certificate;

--Mr. William R. Lyon, Chief Inspector and Director of Quality Assurance, who has had a 24-year career in aircraft maintenance with People Express and Continental, has served as an aircraft maintenance and safety advisor with Simat Helliesen & Eichner, and holds an FAA-issued Airframe and Powerplant Mechanic Certificate;

--Ms. Amy Curtis McIntyre, Vice President for Marketing & Sales, who has spent ten years in travel and tourism marketing including with Virgin Atlantic Airways; and

--Ms. Ann Rhoades, Executive Vice President for People, who has accumulated 20 years of experience in the field of human resources management, including with Southwest Airlines.

⁸ 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.

If granted the certificate authority it seeks, JetBlue intends to provide low-cost, low-fare, high-frequency scheduled passenger service between its JFK base in New York and various cities primarily in the eastern U.S.⁹ To begin operations, the applicant states that it plans to lease two new A-320s in a 162-seat, all-coach configuration. The fleet would be increased to six such aircraft by the end of the first six months and to 11 (five leased and six purchased) by the end of the first year. JetBlue states that it has entered into agreements with AVSA (Airbus) and International Aero Engines AG (“IAE”) to purchase 25 new A-320s and the requisite engines, which are to be delivered over four years beginning in June 2000. The agreement with AVSA includes options for 50 additional A-320s which would be delivered between 2003 and 2007.

JetBlue prepared an illustrative forecast for the first year of operations showing how its service would begin with two aircraft serving two points from JFK, and expand to up to 11 aircraft serving 11 cities. Projected monthly revenue and operating expenses were supplemented with per-unit details and traffic data. JetBlue also listed the expenses that it expects to incur during the remaining months of its pre-operating phase.¹⁰ These costs are to cover such items as aircraft deposits, spare engines and parts, computers, ground equipment, personnel training costs, station setup, advertising, and certification costs. JetBlue stated that, as part of the purchase agreements, Airbus and other vendors will provide training for flight, dispatch and maintenance employees, and key technical managers.

The applicant estimates that its pre-operating costs, including capital expenditures, will total approximately \$66.8 million. Of this amount, \$9.5 million had been expended prior to the filing of its certificate application, leaving an estimated \$57.3 million in pre-operating expenses yet to be paid. JetBlue also projected that its total first-year operating costs will approximate \$98.1 million. We have examined JetBlue’s projected expenses and find them to be reasonable. Based on our analysis of JetBlue’s projections, it appears that the company will need access to resources of at least \$81.8 million to meet our financial fitness criteria.¹¹

JetBlue’s balance sheet as of December 31, 1998, reflected current assets of \$11.5 million, fixed assets of \$1.1 million, total liabilities of \$336,600, and stockholders’ equity of \$12.3 million. The

⁹ The applicant states that it has not decided which of 44 potential markets it will serve. Prospective service points include Atlanta, Boston, Cleveland, Dallas, Ft. Lauderdale, Houston, Memphis, Minneapolis/St. Paul, New Orleans, Raleigh/Durham, Salt Lake City, and Tampa.

¹⁰ JetBlue stated that its projections were based on historical New York passenger traffic, the operating experience of People Express and Southwest Airlines, data supplied by Airbus and other suppliers, and industry knowledge acquired by the applicant’s management team.

¹¹ This amount is comprised of the projected \$57.3 million in remaining pre-operating costs plus \$24.5 million, which is approximately one-fourth of the applicant’s projected total first-year operating costs of \$98.1 million. In evaluating an applicant’s financial fitness, the Department generally asks that the company have available to it resources sufficient to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of normal certificated operations. Because projected expenses during one or more of the first several months of service 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.

applicant states that, by the time service is inaugurated, its investors will have contributed approximately \$128.2 million in exchange for shares of common and preferred stock. The applicant declares that, in accordance with its funding schedule, approximately \$13 million had been paid in by December 1998, and approximately \$32.3 million by March 31, 1999.

In consideration of the foregoing, we tentatively conclude that, if its funding schedule is successfully met,¹² JetBlue will have sufficient financial resources available to enable it to institute its proposed scheduled passenger operations with up to 11 A-320 aircraft without posing an undue risk to consumers or their funds. However, if the applicant is not granted the requested slot exemption, with the result that it would be unable to execute the operating plan upon which this tentative fitness finding is based, JetBlue would have to submit an amended application with an alternative service plan along with supporting evidence of its fitness.

Answers of IAM

In its May 28 answer objecting to JetBlue's application for certificate authority, IAM represents that it is the certified collective bargaining representative of over 100,000 air transportation employees, many of whom work in the New York City area. IAM contends that JetBlue improperly assumes that the Department will grant its request for an exemption to the high-density rule ("HDR"). IAM complains that JetBlue has not identified the specific routes to be associated with each of the 75 slots it has requested, instead expecting the Department to grant it a "blanket exemption." IAM argues that, if the Department were to grant an exemption from the HDR on these terms, the recipient should not be an air carrier that plans to provide its employees with "substandard wages and benefits [as it alleges JetBlue does] . . . which will undermine the compensation and working conditions" of New York-area airline employees represented by IAM.¹³ IAM further declares that JetBlue should be directed to revise its business plan because it was based on an "unrealistic" and unsupported projection that the carrier will be able to achieve a 65 percent load factor throughout its first year of operations.

In response to IAM's allegations, JetBlue claims that, in view of its proposed low fares and number of daily operations, its passenger demand forecasts are conservative. JetBlue asserts that it did not identify which of the 44 potential routes it would serve in order to retain flexibility to alter its plans in response to market conditions without the need to seek additional exemptions from the Department. The applicant further maintains that its employees will be receiving "very competitive" wages as well as profit-sharing and other benefits.

In its July 2 response to JetBlue's reply, IAM notes that the applicant has not clarified which individuals will be responsible for certain functions, *i.e.*, compliance with consumer, reporting and security regulations, and overseeing the work of various contractors. It also points out that key technical managers had no "hands-on" experience with, and had not completed training on, the

¹² Before it can be awarded any effective certificate authority to engage in the proposed operations, JetBlue must provide independent verification that it has actually received and has available the funds to meet our financial fitness criteria.

¹³ IAM answer at 3.

operation and maintenance of the A-320 aircraft to be used by JetBlue. IAM argues that the Department should therefore find that the applicant lacks the requisite managerial competence to conduct the proposed operations.

On July 14, JetBlue answered IAM's objections, noting that it provided information in its application and supplemental filings on the individuals filling the key personnel positions specified in the Department's rules in order to evaluate the company's managerial competence, and that it will be hiring additional employees as needed. In addition, JetBlue states that its Director of Maintenance and Chief Inspector hold certificates from the FAA as Airframe and Powerplant Mechanics and will complete their A-320 training well ahead of the commencement of the proposed operations.

We have carefully reviewed IAM's and JetBlue's comments. The issues raised by IAM that relate to JetBlue's slot exemption application will be addressed in the Department's decision in Docket OST-99-5085. However, if JetBlue is not awarded the exemption it seeks, it will have to amend its application with a new service plan.

With respect to the applicant's fitness, JetBlue's illustrative service proposal is fully adequate for our financial analysis needs. Thus, we did not find the lack of specificity regarding its prospective points of service to be an obstacle in our analysis of its operating plan and cost forecast since JetBlue provided detailed information (*e.g.*, air miles, flight times, and costs associated with serving those points, such as landing fees) in its service proposal.

Similarly, it is not our practice to judge the validity of traffic, revenue or load factor estimates. While we certainly evaluate the overall reasonableness of an applicant's service proposal, our primary focus is on evidence that the applicant fully understands and has reasonably estimated the *costs* involved in the proposed operations, and has available to it resources sufficient to meet our financial fitness criteria to cover those expenses. Whether an applicant has misjudged the competitive environment or erred in its marketing plan, thus making it unlikely achieve its projected load factor and earn a profit, are not factors we consider in assessing a company's fitness.

As to IAM's concerns about the competence of JetBlue's key personnel, we have reviewed and evaluated the skills and experience of the individuals thus far identified by JetBlue to perform most of its managerial functions. On that basis, as noted in the **Managerial Competence** section above, we tentatively find them to be qualified for their positions. Moreover, JetBlue will have to satisfy the FAA that its key operational and maintenance managers have the necessary training and aircraft type ratings to properly manage the applicant's operations.

Compliance Disposition

JetBlue stated that none of the entities that hold a substantial interest in the applicant, nor any of its directors or key personnel have been the subject of any actions or outstanding judgments, or of any charges of unfair, deceptive or anticompetitive business practices, or of fraud, felony or antitrust violations in the past ten years. Moreover, the applicant confirmed that none of these

entities and individuals have been named in any pending investigations, enforcement actions or formal complaints filed with the Department, including the FAA, regarding compliance with the Statute or orders, rules, or requirements issued pursuant to the Statute, or been involved in any aircraft accidents or incidents that occurred either during the past year or at any previous time which remain under investigation.

JetBlue provided information on a compliance matter involving Messrs. Neeleman and Kelly when they were senior officers of Morris. The applicant acknowledged that, when Morris was conducting public charter operations, prior to its certification as an air carrier, it was found by the Department to have violated provisions of the Statute and our charter regulations in 1991 and 1992 by, among other things, holding itself out as a direct air carrier and holding out charter service as scheduled service. Morris agreed to the issuance of a cease and desist order and to the payment of a civil penalty (*see* Order 92-10-44, issued October 28, 1992). In Order to Show Cause 92-11-6 tentatively finding Morris fit to operate as a certificated air carrier under the same management, the Department concluded that Morris's receipt of certificate authority and other actions it had taken to ensure compliance with our rules should preclude such violations from recurring.

Based on our review of the Department's records, it appears that Morris generally maintained a satisfactory compliance disposition as a certificated air carrier,¹⁴ and that there is no evidence of any other compliance issues involving JetBlue, its stockholders or key personnel. JetBlue has applied for certification under Part 121 of the Federal Aviation Regulations and that certification process is proceeding normally.

In light of these circumstances, we tentatively conclude that JetBlue 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

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

¹⁴ FAA records revealed that Morris was assessed a total of \$15,000 in civil penalties associated with alleged violations of passenger security regulations and one instance of improper maintenance practices during its two-year operating life. Throughout this period, Morris had no accidents and three incidents, the latter involving a bird strike, a landing gear malfunction, and damage from a luggage cart. Our consumer complaints records indicate that we received a total of 70 complaints about Morris's operations, principally concerning flight cancellations or delays, ticketing and reservation issues, and baggage problems. In March 1994, the Department brought to Morris's attention our concern about its delinquency in filing its Form 41 reports. Subsequently, the company's compliance with our reporting requirements improved.

interpreted the statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

JetBlue is a corporation organized under the laws of the State of Delaware. It has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute and that it is actually controlled by U.S. citizens. The applicant has declared that 75.26 percent of its voting stock is owned by entities or individuals that are U.S. citizens. Four holders of an aggregate of 24.74 percent of JetBlue voting stock -- Weston New Air Holdings, LLC; Quantum Industrial Partners, LDC; Mass Mutual Corporate Value Partners, LDC; and Mr. Mark Hill -- are not U.S. citizens. The company provided a copy of its certificate of incorporation which contains provisions that prevent the percentage of JetBlue voting stock owned by non-U.S. citizens from exceeding that allowed by the Statute.¹⁵ In addition, the applicant has declared that all of its directors and other key personnel are citizens of the United States and that none of the directors are nominees of the non-U.S. shareholders. Finally, we have found nothing in the record to suggest that control of JetBlue rests with non-U.S. citizens.

Based on the above, we tentatively conclude that JetBlue is a citizen of the United States and is fit, willing, and able to conduct the interstate scheduled passenger operations proposed in its application.

OBJECTIONS

We will give interested persons 14 calendar 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 calendar days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses.¹⁶ 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 JetBlue's fitness and certification, and will issue a certificate that will contain an exact copy of the attached Terms, Conditions, and Limitations.

CERTIFICATE CONDITIONS AND LIMITATIONS

¹⁵ Moreover, the corporate documents for JetBlue confirm that none of the non-U.S. shareholders has any voting, dividend, liquidation, or other rights not common to other holders of the same class of JetBlue stock.

¹⁶ 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 procedure should be specified (*See* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

If JetBlue is found fit and issued the certificate it seeks, its authority will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its certificate. Among other things, this includes our receipt of evidence that JetBlue has been certified by the FAA to engage in the subject operations, a fully executed OST Form 6410 evidencing liability insurance coverage that meets the requirements of Part 205 of our rules, verification of its funding, and a statement of changes it may have undergone since its fitness was examined.

Furthermore, we remind JetBlue of the requirements of 49 U.S.C. 41110(e). Specifically, that 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 as to the applicant's fitness will not apply if JetBlue is not awarded the HDR slot exemption requested in Docket OST-99-5085, which presently forms the basis of its service proposal. In such a case, JetBlue must submit an amended application with an alternative service proposal, along with evidence supporting its fitness to conduct the new operations.

In addition, our tentative findings are based on a first-year operating plan wherein JetBlue would utilize up to 11 A-320 aircraft. These findings might no longer apply if the company were to substantially change the scope or nature of its operations through the introduction of additional aircraft. Therefore, once the applicant's certificate becomes effective, should it propose to acquire and operate more than 11 such 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 JetBlue propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.¹⁷ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).¹⁸

¹⁷ JetBlue 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. Moreover, 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. If the carrier fails to file any of this 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.

¹⁸ We also remind JetBlue 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.

To aid the Department in its responsibility to monitor 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 its operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,¹⁹ 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 the tentative findings and conclusions stated above and award a certificate to JetBlue Corporation authorizing it to engage in interstate scheduled 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 award set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-99-5616, and serve them upon all persons listed in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar 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.²⁰
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.
5. We grant the motions of JetBlue Airways Corporation and the International Association of Machinists and Aerospace Workers, AFL-CIO, for leave to file unauthorized documents.
6. We will serve a copy of this order on the persons listed in Attachment A.
7. We will publish a summary of this order in the Federal Register.

By:

¹⁹ 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.

²⁰ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

A. BRADLEY MIMS
Acting 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/reports/reports_aviation.asp*

SPECIMEN

Attachment



Terms, Conditions, and Limitations

JETBLUE AIRWAYS CORPORATION

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 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) or issue tickets for the operations proposed under this certificate, 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 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) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*

(a) *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.*

(b) *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.*

(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.

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