



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

Issued by the Department of Transportation
on the 31st day of August, 1999

Served: September 2, 1999

Application of

OZARK AIR LINES, 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-99-5288

FINAL ORDER

By Order 99-7-3, issued July 6, 1999, we directed all interested persons to show cause why we should not make final our tentative findings and conclusions stated in it and award a certificate of public convenience and necessity to Ozark Air Lines, Inc., authorizing it to engage in interstate scheduled air transportation of persons, property, and mail. Ozark proposes to operate 32-seat Dornier aircraft from Columbia, Missouri, to Chicago and Dallas. Interested persons were given 14 days to file objections to the order.

The Pleadings

On July 22, 1999, we received an answer from The City of Fort Worth, Texas (Fort Worth). Fort Worth states that it does not oppose the Department's tentative finding in Order 99-7-3 that Ozark is fit, willing, and able to provide scheduled passenger service between Dallas and Columbia, Missouri. However, Fort Worth indicates that Order 99-7-3 does not disclose which Dallas-area airport Ozark intends to serve; and that, if Ozark proposes to provide service into Love Field instead of Dallas-Fort Worth International Airport (DFW) that proposal would violate the judgment of the Texas state district court that held that the City of Dallas (Dallas), Love Field's owner, may not allow airlines to operate any interstate scheduled passenger flights except for flights between Love Field and points within the states bordering on Texas (New Mexico, Oklahoma, Arkansas, and Louisiana).

On August 12, 1999, Ozark filed its response. Ozark states that it has been in contact with officials from DFW about the services available at that airport; and that it has also requested information on the availability of gates at Love Field and has corresponded with Love Field officials. However, Ozark states that it has not signed any agreement with any airport in the Dallas regional area for gates or services.

Decision

After review of the answer and reply, we have decided to adopt in full the tentative findings and conclusions stated in Order 99-7-3.¹

Fort Worth contends that Ozark's use of Love Field would violate a Texas state court judgment on operations at Love Field. The court issued that judgment in a suit filed by Fort Worth against Dallas; neither this Department nor Ozark was a party in the case.

In our *Love Field Service Interpretation Proceeding* (Docket OST-98-4363), we ruled on several statutory interpretation issues involving airline services at Love Field, including the issues ruled upon by the state court.² We interpreted three statutes governing Love Field service. Two of the statutes -- section 29 of the International Air Transportation Competition Act of 1979, P.L. No. 96-192, 94 Stat. 35, 48-49 (1980) ("the Wright Amendment"), and section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998, P.L. No. 105-66, 111 Stat. 1425, 1447 (1997) ("the Shelby Amendment") -- specifically restrict interstate flights at Love Field. The third statute, 49 U.S.C. 41713(b), preempts state and local government regulation of airline routes, fares, and services, but allows a state or local government owning an airport to exercise its proprietary powers as the airport's owner.

We determined that any airline was entitled under the Wright Amendment to operate longhaul flights from Love Field with aircraft that have no more than 56 seats and that 49 U.S.C. 41713(b) prohibited Dallas from blocking such flights (or other flights authorized by the Wright and Shelby Amendments). We further held that the state court judgment, which reached the opposite result, did not preclude us from issuing our interpretation of the federal statutes. Fort Worth and several other parties are now seeking judicial review of these decisions. *American Airlines et al. v. Department of Transportation*, 5th Cir. No. 99-60008.

Ozark therefore may use Love Field for its proposed flights. Since Fort Worth has given no reason why we should not follow our earlier decision, its comments provide no basis for denying Ozark's application or requiring Ozark to use DFW. Furthermore, deferring to the state court judgment as demanded by Fort Worth would be contrary to our responsibility to administer and enforce the federal statutes at issue. Moreover, the state court judgment does not and cannot restrict the Department's authority to carry out the Wright and Shelby Amendments in granting certificate authority to air carriers. In fact, every certificated air carrier in the United States has authority to operate to and from Love Field in accordance with those statutory provisions. (*See* Order 98-7-6, July 8, 1998.) We find no basis to deny similar authority to Ozark.

¹ As noted in the show-cause order, we will not make Ozark's authority effective until it has complied with a number of conditions, including receipt of appropriate FAA authority. Moreover, if there is any material change in Ozark's business plan, it will need to file a revised plan with us for our review.

² Orders 98-12-27 and 98-12-28 (December 22, 1998); Orders 99-4-13 and 99-4-14 (April 13, 1999).

In light of the above, we will finalize our tentative findings set out in Order 99-7-3, and find Ozark fit to engage in interstate scheduled passenger operations and award the company a certificate authorizing it to do so.

ACCORDINGLY,

1. We find that Ozark Air Lines, Inc., is fit, willing, and able to engage in interstate scheduled air transportation of persons, property, and mail.
2. We issue a certificate of public convenience and necessity to Ozark Air Lines, Inc., to engage in interstate scheduled air transportation in the form and subject to the Terms, Conditions, and Limitations attached.
3. We direct Ozark Air Lines, Inc., to submit to the Air Carrier Fitness Division a first year progress report within 45 days following the end of its first year of actual flight operations.³
4. We will serve a copy of this order on the persons listed in Attachment A.

By:

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*

³ The report shall include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements, and a listing of current senior management and key technical personnel.



**Certificate of Public Convenience and Necessity
for
Interstate Air Transportation**

This Certifies That

OZARK AIR LINES, 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 99-8-27
On August 31, 1999
Effective on (see attached)
Affairs**

**A. Bradley Mims
Acting Assistant Secretary for
Aviation and International**



Terms, Conditions, and Limitations

OZARK AIR LINES, 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 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 operations authorized by this certificate are restricted to those performed with aircraft having a maximum capacity of 60 passenger seats or less. In the event the holder wishes to institute operations with aircraft having a larger capacity, it must first be determined fit for such operations.

(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 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.

(8) 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.

(9) 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.

(10) 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, unless the holder is conducting operations under another type of certificate authority. 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 all certificates held 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 FOROZARK

AIR LINES, INC.

Attachment A

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