

Served: July 13, 1999



**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 July, 1999

Application of

PUERTO RICO AIRWAYS, CORP.

Docket OST-98-4838

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

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

Summary

By this order, we tentatively find that Puerto Rico Airways Corp. ("PRA") is fit, willing, and able to provide interstate scheduled air transportation of persons, property, and mail as a certificated air carrier.

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 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' 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 December 2, 1998, PRA filed an application in Docket OST-98-4838 for a certificate to provide interstate scheduled air transportation pursuant to 49 U.S.C. 41102, and accompanied its application with information required by section 204.3 of our regulations for an examination of its fitness.¹

The Company

PRA, with headquarters in both New York and San Juan, was incorporated under the laws of the State of Delaware in September 1986. Until completion of a proposed private placement of securities, the only owner of a substantial share of PRA's stock is Mr. Guillermo Ortiz, the company's founder and Chairman (73.58 percent). The balance of the stock presently is divided among five of PRA's directors, seven employees, and several other investors.²

If granted the authority it seeks, PRA intends to provide low-cost interstate scheduled passenger and cargo service between New York's John F. Kennedy Airport ("JFK") and San Juan, Puerto Rico, using, initially, a fleet of two leased 173-seat Boeing 727-200 aircraft. It anticipates adding four additional 727-200 aircraft over the next three years of operations.

Managerial Competence

Mr. Guillermo Ortiz is PRA's founder, Chairman, President and Chief Executive Officer. For the past 13 years, he has offered consulting services in aviation marketing, maintenance programs, pilot selection and training, and aircraft evaluation and acquisition. He gained his aviation experience as a pilot/check pilot, flight instructor, and management advisor at Air Newark, Inc., an air taxi operator located at Teterboro, New Jersey; and as a heavy transport aircraft mechanic with the Military Airlift Command. He also established and operated several electronic product sales and repair businesses located in Brooklyn. Mr. Ortiz holds Airline Transport Pilot and Flight Instructor Certificates from the FAA.

Mr. Rafael O. Peña, PRA's Senior Vice President of Finance and Treasurer, has approximately 18 years of experience in finance and accounting. He worked as a senior auditor for Deloitte and Touche before serving as Manager of Financial Statements Reporting for Eastern Air Lines during its last four years, and as Accounting and Finance Manager at Transbrasil Airlines in Miami.

¹ Puerto Rico Airways filed information supplementing its application on January 26, April 27, and May 28, 1999. In addition, PRA filed motions on April 27 and June 7 requesting that information on its efforts to raise operating capital be accorded confidential treatment. In a letter dated June 25, 1999, the Department ruled on the applicant's motions for confidentiality and directed the applicant to file a redacted version of certain of those documents in the public docket. PRA did so on July 2, 1999.

² In addition to Mr. Ortiz, PRA's seven-member board of directors is composed of Mr. Fernando L. Borges, an attorney with 30 years of experience in Puerto Rico law enforcement; Mr. Antonio Bauza Torres, an attorney and former Superior Court Judge in San Juan; Dr. Marcelino Batista, a dentist practicing in Puerto Rico who is also a licensed private pilot; Mr. Solano David Santiago, a businessman with interests in Puerto Rico as well as in the New York civic and business community; Mr. Hector J. Borges, Diversity Development Specialist with the U.S. Postal Service; and Mr. Eduardo LaGuerre, Chief Executive Officer of the Neighborhood Association for Intercultural Affairs in New York City.

Subsequently, Mr. Peña worked as Business Manager for Beasley FM Acquisition Corp. in Miami, and, most recently, as Controller of Radio Unica Network.

PRA's Chief Pilot, Mr. Albert R. Zapata, brings over 30 years of aviation experience to the applicant. His aviation career began at PrinAir, a commuter carrier located in San Juan, where he worked as a pilot for 16 years. He was also employed as a pilot with two scheduled air carriers -- Air Puerto Rico Airlines and American Eagle -- both located in Carolina, Puerto Rico. Mr. Zapata holds an Airline Transport Pilot Certificate issued by the FAA and is rated on the B-727 aircraft to be utilized by PRA. He has logged over 19,000 hours of flight time.

Mr. Hiram Maldonado serves as PRA's Director of Maintenance. Mr. Maldonado's extensive airline maintenance experience began with his employment with Eastern Air Lines for 37 years as Director of Maintenance for the Latin American Division. From 1991 to 1996, Mr. Maldonado worked as a Maintenance Director for air taxi operators in the Caribbean area. From 1996 until 1998, Mr. Maldonado worked as a Maintenance Manager for Pan American World Airways and, just prior to joining PRA, for Caribbean International Airlines, a commuter carrier. Mr. Maldonado holds an Airframe and Powerplant Mechanic license from the FAA.

Mr. Richard B. Peacock II has accepted the position of Director of Operations with PRA. During his 25-year career in commercial aviation, he has worked as a pilot and as Director of Operations for Airways International, a commuter carrier based in Miami; Manager of Flight Training for the second Pan American World Airways in Miami; Director of Operations for Universal Airlines, Inc., a certificated carrier located in Ypsilanti, Michigan; and, most recently, Director of Operations for Rhoades Aviation, Inc., an air taxi operator conducting FAR Part 121 operations at Columbus, Indiana. Mr. Peacock holds an FAA-issued Airline Transport Pilot Certificate.

In view of the experience and background of the applicant's key personnel,³ we tentatively conclude that PRA has demonstrated that it has the management skills and technical ability to conduct its proposed service.⁴

Financial Plan and Operating Proposal

If granted the certificate authority it seeks, PRA intends initially to provide two non-stop round-trip flights daily between its hub at Luis Muñoz Marin International Airport at San Juan and New York's JFK International

³ In addition to the individuals noted above, PRA has designated other persons who appear to be well qualified to hold their respective managerial positions with the company. Mr. Maximo Otero, Director of Customer Service, gained his experience in the field while managing various small retail businesses in the New York City area. He also studied aviation at the East New York Vocational School. Mr. Mercado, PRA's Chief Inspector, has nearly 40 years of aviation maintenance and inspection experience with such carriers as Pan American World Airways, Eastern Air Lines, Sea Air Shuttle, and Carnival Airlines. He holds an FAA-issued Airframe and Powerplant Mechanic Certificate. Mr. Juan B. Aviles, the applicant's Chief of Company Safety, has 30 years of experience as a civil and commercial engineer and as a pilot and aviation safety officer with the Puerto Rico Army National Guard.

⁴ 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.

Airport, using two B-727-200 aircraft configured for 173 single-class seats.⁵ By the end of its third year of operations, the applicant expects to operate six Boeing 727-200 aircraft.

PRA provided detailed traffic projections and forecasts of its anticipated pre-operating expenses and operating expenses for its first year of certificated air service. The applicant states that most routine aircraft maintenance work will be performed by its own employees at San Juan with back-up service available from Horizon Aviation Service at JFK. Heavy maintenance services performed by contract firms will be overseen by PRA's quality assurance personnel. The applicant intends to provide its own passenger services in San Juan and to out-source passenger and ground handling in New York, as well as employee training, cargo handling, accounting, reservations and catering services. PRA anticipates that pre-operating expenses will amount to \$3.1 million and that total first-year operating expenses will be \$24.0 million. We have reviewed the applicant's projections and find them to be reasonable. Based on this evaluation, it appears that PRA will need at least \$9.1 million to meet our financial fitness criteria.⁶

The company's founders contributed approximately \$240,000 in exchange for shares of common stock. In addition, in a private placement, PRA offered \$10 million of subordinated debentures with warrants exercisable for shares of common stock, and \$5 million of cumulative convertible preferred stock, resulting in expected total proceeds of approximately \$13.4 million.⁷ After examining the applicant's capitalization plans, we tentatively conclude that, if these plans are carried out, the company will have sufficient financial resources available to enable it to commence its proposed scheduled operations without posing an undue risk to consumers or their funds. However, as is our practice when a company does not yet have its funding in hand, we will condition the effectiveness of any certificate authority which may be issued to PRA upon its first providing certain additional financial information including a verification of its funding.⁸

Compliance Disposition

PRA stated that there are no actions or outstanding judgments against it, its owners, or its key personnel, nor have there been any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations brought against any of these parties in the past ten years. The applicant further stated that there have been no formal complaints filed or orders

⁵ The applicant proposes to add Aguadilla, Puerto Rico, as an additional destination if market conditions are favorable.

⁶ This figure is comprised of PRA's pre-operating expense forecast of \$3.1 million and \$6.0 million which is one-quarter of its anticipated total first-year operating cost estimate of \$24.0 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 of operations 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.

⁷ The applicant has also applied for, and is confident of obtaining, a \$3.0 million loan through Banco de Desarrollo para Puerto Rico. If granted the loan, the applicant will be required to use the proceeds for its operational expenses only.

⁸ See the **Certificate Conditions and Limitations** section of this order for a detailed list of information that will be required.

issued finding any of these parties to be in violation of the Statute or the Federal Aviation Regulations.

Our search of the Department's records found no compliance problems with PRA, its owners, or key personnel. We also reviewed the FAA's records with respect to the compliance history of PRA's key personnel and found no enforcement or safety issues involving any of these individuals except for one incident involving Mr. Zapata, the applicant's Chief Pilot. FAA records indicate that on October 25, 1998, when Mr. Zapata was employed as a pilot with American Eagle, an ATR-42 aircraft that Mr. Zapata was preparing to taxi was allowed to roll forward, resulting in a collision with an air conditioning/ground power unit and a subsequent fire. No major damage and no personal injuries were sustained. The FAA opened an enforcement investigation to determine whether any sanctions should be sought against Mr. Zapata in this instance. A resolution of the matter is pending. However, the FAA has stated that, unless its investigation concludes that Mr. Zapata was culpable to a degree that certificate action will be taken against him, the FAA considers him to be qualified to serve as PRA's Chief Pilot. Further, the FAA has advised us that the company has applied for certification under Part 121 of the Federal Aviation Regulations, that the management presented thus far appear to be qualified for their positions with the applicant, and that it knows of no reason why we should act unfavorably on the company's application.

Considering the applicant's overall compliance record, we tentatively conclude that PRA 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. We will, however, monitor the progress of the FAA's enforcement action against Mr. Zapata, and, if certificate action should be taken against him, we will follow up with both the FAA and PRA to ensure that a qualified individual is promptly identified and approved to serve as the carrier's Chief Pilot.

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

PRA's owners and key personnel are all U.S. citizens and the company 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. Finally, our review of the applicant's citizenship has uncovered no reason to suggest that control of the company rests with non-U.S. citizens.

Based on the above, we tentatively conclude that PRA 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. 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. 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 PRA's fitness and certification.

CERTIFICATE CONDITIONS & LIMITATIONS

If PRA 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 the company 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, and a revised list of pre-operating expenses already paid and those remaining to be paid, along with third-party verification that the company has available, either through deposits in its own name or a line-of-credit, sufficient funds to meet our financial fitness criteria.

Furthermore, we remind PRA 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 stated above are based on the first-year operating plan described in PRA's application which utilizes two 173-passenger 727-200 aircraft. These findings might no longer apply if the company were to substantially change the scope of its operations through the introduction of additional aircraft. Therefore, we propose to limit the certificate authority issued to PRA to operations with the two aircraft the company has described. Should PRA propose to operate any additional aircraft, it must first be determined fit for such operations. Further, should PRA propose any 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 the Statute.¹⁰

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 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 their operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,¹¹ 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.

⁹ In addition, 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. The carrier 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. 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 We also remind Puerto Rico Airways 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.

¹¹ 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.

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 Puerto Rico Airways, Corp., 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-99-4838, 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.¹²
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 will serve a notice of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

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.*

¹² Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



SPECIMEN

Terms, Conditions, and Limitations

PUERTO RICO AIRWAYS, CORP.

is authorized to engage in interstate scheduled 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), issue tickets for the operations proposed under this certificate, or enter into contracts with charter operators, and any advertisement 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) The holder is not authorized to engage in air transportation operations between points within the State of Alaska.

(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.

SERVICE LIST FOR PUERTO RICO AIRWAYS, CORP.

GUILLERMO ORTIZ-OSORIO
PRESIDENT
PUERTO RICO AIRWAYS CORP
406 MOTHER CASTON BLVD
BROOKLYN NY 11212

MGR FLIGHT STANDARDS DIV
FAA ASO-200
SOUTHERN REGION HQ
P O BOX 20636
ATLANTA GA 30337

REGIONAL COUNSEL
FAA ASO-7
SOUTHERN REGION HQ
P O BOX 20636
ATLANTA GA 30337

MANAGER FSDO
FEDERAL AVIATION ADMIN
LA TORRE DE PLAZA LAS
AMERICAS
525 FD ROOSEVELT AVE STE 901
SAN JUAN PR 00918-1198

QUENTIN SMITH
MANAGER AFS-200
AIR TRANSPORT DIV
FEDERAL AVIATION ADMIN
800 INDEPENDENCE AVE SW
WASHINGTON DC 20591

AMERICAN ASSOC OF
AIRPORT EXEC
4224 KING STREET
ALEXANDRIA VA 22302

LOUIS CUSIMANO AFS-900
MANAGER
FLIGHT STAND CERT PRGM
FEDERAL AVIATION ADMIN
45005 AVIATION DR STE 131
DULLES VA 20166-7537

PETER LYNCH AGC-300
ASST CHIEF COUNSEL FOR
ENFORCEMENT
FEDERAL AVIATION ADMIN
800 INDEPENDENCE AVE SW
WASHINGTON DC 20591

TIM CARMODY K-25
DIRECTOR
OFFICE OF AIRLINE INFO
DEPT OF TRANSPORTATION
400 SEVENTH ST SW
WASHINGTON DC 20590

JONI MOUNT
OFFICIAL AIRLINE GUIDES
2000 CLEARWATER DR
OAK BROOK IL 60521

JIM ZAMMAR
DIR OF REV ACCOUNTING
AIR TRANSPORT ASSOC
STE 1100
1301 PENNSYLVANIA AVE NW
WASHINGTON DC 20004

ALLAN MUTEN
ASST TREASURER
AIRLINES REPORTING CORP
1530 WILSON BLVD STE 800
ARLINGTON VA 22209