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

SERVED DEC 13 1999

Issued by the Department of Transportation
on the 12th day of October, 1999

Application of

AIR COMET S.A.

for a foreign air carrier permit under
49 U.S.C. § 41301

Docket OST-97-2196-5

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

Summary

In this order we are issuing Air Comet **S.A.**, a foreign air carrier of Spain, a foreign air carrier permit under § 41301 of Title 49 of the U.S. Code to perform charter foreign air transportation of persons, property and mail between Spain and the United States; and other charters subject to Part 212 of the Department's rules.

Application

By application filed March 10, 1997, as supplemented September 13, 1999, Air Comet seeks an initial foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between Spain and the United States; and to perform other charters in accordance with the Department's rules governing charter operations.¹

In support of its application, Air Comet states that it has been licensed by the Government of Spain to perform the proposed services; that it is substantially owned and effectively controlled by citizens of Spain; and that it is operationally and financially fit to perform the proposed services.

No answers were filed in response to Air Comet's permit **application**.²

¹ We granted Air Comet initial exemption authority on March 19, 1997, to engage in charter foreign air transportation of persons, property and mail between Spain and the United States, and to perform other charters in accordance with Part 212 of the Department's rules. See Order 97-4-28. On April 30, 1999, we renewed Air Comet's authority to conduct these operations for one year, through April 30, 2000. See Notice of Action Taken, dated April 30, 1999, Docket OST-97-2197.

² On May 10, 1999, Universal Air Travel Plan (UATP) filed both in this docket, and in the docket containing Air Comet's exemption authority (Docket OST-97-2197) correspondence sent by UATP to

Decision

We have reviewed the record in this case, which is summarized in the attachment to this order, and have decided to grant the application using simplified Subpart Q **procedures**.³ The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications **filed**.⁴ The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case, because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Air Comet is qualified to conduct the proposed operations.

Public Interest Considerations

Aviation relations between the United States and Spain are governed by the U.S.-Spain Air Transport Services Agreement (entered into force August **3, 1973**), as amended. While the charter authority Air Comet seeks is not encompassed in the bilateral aviation agreement between the United States and Spain, we find that adequate comity and reciprocity and our overall aviation relationship with Spain support favorable action on Air Comet's **application**.⁵

Operational and Financial Fitness

We find that Air Comet is operationally and financially fit to conduct the operations at issue here. Air Comet commenced passenger charter operations between Spain and the United States in March **1997**, has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five **years**.⁶ Air Comet holds effective authority **from** its

Air Comet relating to Air Comet's use of the trade name Air Plus Comet. We need not address this issue. Under Part **215** of our Regulations, responsibility for resolving name disputes rests with the air carriers involved through recourse to the trade name statutes and the courts. We note from UATP's correspondence that it is pursuing such a resolution in the Spanish courts.

³ **14 CFR 302.1701 et seq.** Under Rule **29(b)**, we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

⁴ **62 FR 13935, March 24, 1997.**

⁵ **See** United States-Spain Air Transport Services Agreement (entered into force August **3, 1973**), as amended. Under the Department's rules governing charter operations (**14 CFR Part 212**), unless otherwise ordered by the Department, any foreign air carrier whose permit authorizes charters may perform Third and Fourth Freedom charters without limitation or specific prior approval, and may perform Fifth Freedom charters upon obtaining a specific statement of authorization from the Department.

⁶ Air Comet reports that during **1998** it inadvertently conducted a number of flight operations **to/from** the United States with a new aircraft (**A-310**) prior to including the aircraft on its FAR Part **129** Operations Specifications. The FAA's New York office reports that Air Comet subsequently paid a **\$7,000** civil penalty to resolve the violations and is now in good standing with that office. **See** FAA Docket **98EA29001**.

homeland to conduct the proposed operations.’ The FAA has advised us that it knows of no reason why Air Comet’s request for a foreign air carrier permit should not be approved.* Finally, Air Comet has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds.

Ownership and Control

We find that Air Comet is substantially owned and effectively controlled by citizens of Spain. Air Comet is a privately held company, owned by four Spanish companies (Autobuses **Urbanos del Sur, S.A.**; **Transportes de Cercanías, S.A.**; **Proturín, S.A.** and **Segetur, S.A.**). All of Air Comet’s officers, directors and key management personnel are citizens of Spain.

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue Air Comet **S.A.** an initial foreign air **carrier** permit in the form attached;
2. Air Comet **S.A.** is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a “major regulatory action” under the Energy Policy and Conservation Act of 1975, as defined in section 3 **13.4(a)(1)** of our **Regulations**,⁹ and
5. The public interest does not require an oral **evidentiary** hearing on the application.

ACCORDINGLY,

1. We issue, in the form attached, a foreign air carrier permit to Air Comet **S.A.** authorizing it to engage in charter foreign air transportation of persons, property and mail between any point or points in Spain and any point or points in the United States; and to perform other charters in accordance with **14 CFR Part 212** of the Department’s regulations;

⁷ On February 28, 1997, the Government of Spain issued Air Comet an Operating License and Air Operator’s Certificate authorizing Air Comet to engage in international passenger charter operations between Spain and the United States, Europe and Africa.

⁸ A copy of the FAA’s March 18, 1997, memorandum has been placed in Docket **OST-97-2196**.

⁹ This finding is based on the fact that the grant of this permit will not result in a near-term increase in fuel consumption in excess of 10 million gallons.

2. The exercise of the privileges granted above are subject to Air Comet's compliance with the conditions listed in Attachment A;
3. To the extent not granted, we deny all requests for relief in Docket **OST-97-2196**;
4. Unless disapproved by the President of the United States under **§ 41307** of Title **49** of the U.S. Code, this order and the attached permit shall become effective on the **61st** day after its submission for **§ 41307** review, or upon the date of receipt of advice **from** the President or his designee under Executive Order **12597** and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;¹⁰ and
5. We will serve a copy of this order on Air Comet **S.A.**; the Ambassador of **Spain in the** United States; Universal Air Travel Plan; the Department of State and the Federal Aviation Administration (New **York-IFO**).

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*

¹⁰ This order was submitted for **§ 41307** review on October 12, 1999.
On December 8, 1999, we received notification that the **President's** designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

SUMMARY

FOREIGN AIR CARRIER PERMIT APPLICATION Docket OST-97-2196

Air Comet S.A.

Flag: Spain

Federal Register Notice: 62 FR 13935, March 24, 1997

Filing Date: March 10, 1997

Authority Sought: Initial foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between Spain and the United States; and to perform other charters subject to Part 212 of the Department's regulations.

Pleadings: No answers were filed in response to Air Comet's application. However, Universal Air Travel Plan filed copies of a letter it wrote to Air Comet regarding Air Comet's use of the tradename Air Plus Comet. We discuss this matter in the order at 1, n. 2.

Public Interest: Aviation relations between the United States and Spain are governed by the U.S.-Spain Air Transport Services Agreement (entered into force August 3, 1973), as amended. Although the Agreement does not provide for the operation of charter services between the two countries, we find that adequate comity and reciprocity and our overall aviation relationship with Spain support favorable action on Air Comet's application.

Fitness: Air Comet was incorporated in Madrid on January 1, 1997, received initial Department authority on March 19, 1997, and commenced passenger charter operations between Spain and the United States the same month. See Order 97-4-28. On April 30, 1999, we renewed that authority for one year, through April 30, 2000. See Notice of Action Taken, dated April 30, 1999, in Docket OST-97-2197.

Air Comet has experienced management and has had no safety violations, fatal accidents or tariff violations in the last five years.^{1/} Air Comet holds appropriate licenses from its government to conduct the proposed operations.

^{1/} Air Comet reports that during 1998 it inadvertently conducted a number of flight operations to/from the United States with a new aircraft (A-310) prior to including the aircraft on its FAR Part 129 Operations Specifications. The FAA's New York office reports that Air Comet subsequently paid a \$7,000 civil penalty to resolve the violations and is now in good standing with that office. See FAA Docket 98EA29001.

By Memorandum dated March 18, 1997, the FAA's International Liaison Staff (AFS-50) advised us that it knew of no reason why Air Comet's request for a foreign air carrier permit should not be approved.

Air Comet appears financially sound:

Financial Indicators

(\$ thousands)

year ending February 28	<u>1999</u> ^{2/}	<u>1998</u>
Total Assets	17,904	11,030
Total Liabilities	12,183	9,583
Owner's Equity	5,721	1,447
Operating Profit or (Loss)	4,289	664

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

Ownership and Control: Air Comet is substantially owned and effectively controlled by citizens of Spain. Air Comet is a privately held company, owned by four Spanish companies (Autobuses Urbanos del Sur, S.A.; Transportes de Cercanías, S.A.; Proturín, S.A. and Segetur, S.A.). All of Air Comet's officers, directors and key management personnel are citizens of Spain.

^{2/} The 1999 figures, which cover the period March 1 -December 31, 1998, do not represent the entire fiscal year.

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

PERMIT TO FOREIGN AIR CARRIER

Air Comet S.A.

A Flag Carrier of Spain

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code, and the orders, rules, and regulations of the Department of Transportation, to engage in charter foreign air transportation of persons, property and mail as follows:

Between any point or points in Spain and any point or points in the United States.

The holder shall also be authorized to engage in other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached, and to the following:

1. This permit shall be subject to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.
2. This permit shall be subject to the condition that in the event any practice develops which the Department of Transportation regards as inimical to fair competition, the holder and the Department of Transportation will consult and will use their best efforts to agree upon modifications satisfactory to the Department of Transportation and the holder.

This permit shall be effective on **December 8, 1999** , and shall terminate five years thereafter. However, this permit shall terminate upon **the** dissolution or liquidation of the holder to which it was issued. Authority under this permit shall be subject to termination at any time if the authority to conduct flight operations to and from the holder's homeland to any U.S. carrier authorized by the United States is denied, canceled, or unreasonably restricted; provided, however, that if during the period this permit is effective, the operation of the foreign air transportation authorized become the subject of any treaty, convention, or agreement to which the United States and the holder's homeland are or shall become parties, this permit shall continue in effect during the period provided in such treaty, convention, or agreement.

The Department of Transportation has executed this permit and affixed its seal on **December 10, 1999.**

By:

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall :

- (1) Not conduct any operations unless it holds a currently effective authorization **from** its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, **14 CFR Parts 129, 91, and 36**;
- (3) Comply with the requirements for minimum insurance coverage contained in **14 CFR Part 205**, and, prior to the **commencement** of any operations under this authority, file evidence of such coverage, in the form of a completed **OST Form 6411**, with the Federal Aviation Administration's Program Management Branch (**AFS-260**), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of **14 CFR Part 203**, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of **28 U.S.C. 1605(a)**, but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of

carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights **to/from** the United States in its homeland;
- (9) Comply with **the** requirements of **14 CFR Part 217**, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including **14 CFR Parts 212 and 380**); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title **49** of the U.S. Code (formerly the Federal Aviation Act of **1958**, as amended).

