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**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 January, 2000

Served: January 13, 2000

Application of

AIR CARIBBEAN LIMITED

for an exemption under 49 U.S.C. section 40109

Docket OST-99-5612 - 7

ORDER

Summary

In this order we are granting Air Caribbean Limited (Air Caribbean), a foreign air carrier of Trinidad and Tobago, an exemption from § 41301 of Title 49 of the U.S. Code to conduct scheduled combination services between Port of Spain, Trinidad and Tobago and Miami, Florida; via specified intermediate points; and authority to conduct charters subject to Part 212 of our rules.

Application

By application filed April 30, 1999, as supplemented, Air Caribbean requests exemption authority to engage in scheduled foreign air transportation of persons, property and mail between Port of Spain, Trinidad and Tobago, via the intermediate points Antigua, Barbados, Grenada, St. Kitts and St. Lucia, and the terminal point Miami, Florida; and to conduct charters in accordance with Part 212 of our rules. Air Caribbean states that upon approval of its request it intends to commence scheduled combination services between Port of Spain and Miami.

In support of its application, Air Caribbean states that: (1) it is substantially owned and effectively controlled by citizens of Trinidad; (2) it is properly licensed and designated by the Government of Trinidad and Tobago to conduct the proposed services; (3) it holds an Air Operator's Certificate issued by the Civil Aviation Division of the Government of Trinidad and Tobago; and (4) it is fit, willing and able to perform the services at issue here.

Air Caribbean states that it was formed in 1991 and commenced scheduled passenger operations between the islands of Trinidad and Tobago in 1993. Air Caribbean further states that the authority it seeks is provided for in the bilateral aviation agreement in force between the United States and Trinidad and Tobago.¹ Air Caribbean states that Trinidad and Tobago is a contracting state to the Convention on International Civil Aviation and its maintenance program complies with ICAO Annexes 1, 6 (Part 1) and 7. Air Caribbean states that maintenance on its aircraft will be carried out at its base at Port of Spain.

Responsive Pleadings

On May 17, 1999, BWIA International Airways Limited, a foreign air carrier of Trinidad and Tobago, filed an answer opposing Air Caribbean's request. BWIA states that Air Caribbean's application raises a number of issues concerning Air Caribbean's qualifications which we should investigate before acting on the request. Specifically, BWIA states that the designation and license issued Air Caribbean by the Government of Trinidad and Tobago is in dispute because they do not provide for either the scheduled authority via intermediate points or charter authority sought by Air Caribbean;² Air Caribbean has failed to disclose its dependence on financial assistance from its government to support its move from local turboprop operations to long-haul jet services; and Air Caribbean has violated Department rules by holding out on the Internet and in its homeland U.S. services without the benefit of Department authority.

On May 26, 1999, Air Caribbean filed a reply.³ Air Caribbean states that BWIA's opposition to its request is a "flagrant anti-competitive act" intended to impede the services of a new carrier in the market. Air Caribbean states that it is properly licensed and designated by the Government of Trinidad and Tobago to conduct the proposed services; submissions in the instant application meet or exceed the Department's evidentiary requirements to establish its qualifications to conduct the proposed services; and loans with banks owned by its government are standard business transactions. Air Caribbean further states that it complies with the Department's advertising policy, adding that while it did not view its web page as advertising, to avoid any appearance of impropriety it took down the web page on its own initiative before the issue was raised by BWIA.

¹ By diplomatic note (No. 206) dated January 29, 1999, the Ministry of Foreign Affairs of the Government of Trinidad and Tobago designated Air Caribbean to perform scheduled services in accordance with the provisions of Annex I of the Agreement.

² BWIA states that it has applied to the High Court of Justice of Trinidad and Tobago for judicial review of the license issued to Air Caribbean by the Air Transport Licensing Authority (ATLA).

³ On May 27, 1999, Air Caribbean supplemented its May 26 reply by filing and serving certain documents omitted from its reply, including a copy of a diplomatic note (No. 749) from Trinidad and Tobago's Ministry of Foreign Affairs, designating Air Caribbean to operate charter services in accordance with the provisions of Annex II of the Agreement.

On November 9, 1999, Air Caribbean supplemented its request with a revised chart listing current management personnel and a statement that BWIA's court challenge of the license issued to Air Caribbean by the Trinidad's Air Transport Licensing Authority's (ATLA) was resolved in favor of ATLA and Air Caribbean.⁴

On November 19, 1999, BWIA filed an additional responsive pleading reiterating its opposition to Air Caribbean's application.⁵ BWIA states that Air Caribbean's supplemental filing "oversimplifies" the status of BWIA's legal challenge of Air Caribbean's homeland authority. BWIA states that the court entered a consent order noting an agreement between the parties to discontinue the action but made no findings relative to the merits of BWIA's challenge. BWIA further states that Air Caribbean's financial information remains deficient because it does not explain how Air Caribbean will make the financial transition from local turbo-prop services to long-haul jet operations. BWIA argues that that we should seek additional updated financial information from Air Caribbean.

No further pleadings were filed in response to Air Caribbean's request.

Decision

We have decided to grant the request of Air Caribbean Limited to engage in scheduled foreign air transportation of persons, property and mail between Port of Spain, Trinidad and Tobago, via the intermediate points Antigua, Barbados, Grenada, St. Kitts and St. Lucia, and the terminal point Miami, Florida; and to conduct charters in accordance with Part 212 of the Department's rules. The authority granted above will be effective for one year from the service date of this order. We find that our actions here are consistent with the public interest.

Public Interest Considerations

We find that the authority requested by Air Caribbean is provided for in the bilateral aviation agreement between the United States and Trinidad and Tobago.⁶ Air Caribbean has submitted its license from, and is designated by, the Government of Trinidad and Tobago to perform the services at issue here.

⁴ Air Caribbean requested additional relief to the extent necessary to file its supplemental filing to update the record relative to its ownership and control and the status of its homeland operating authority. We will grant Air Caribbean's request.

⁵ BWIA's pleading was accompanied by a motion to file an otherwise unauthorized document. We will grant BWIA's motion.

⁶ See Annex I, Section 1(B) of the 1990 Air Transport Agreement between the United States and Trinidad and Tobago.

Ownership and Control

The record in this proceeding supports a finding that Air Caribbean is substantially owned and effectively controlled by citizens of Trinidad and Tobago.⁷ In addition, all of Air Caribbean's chief management personnel, with the exception of Air Caribbean's chief pilot (a U.S. citizen), are citizens of Trinidad and Tobago.

Financial and Operational Qualifications

We find that Air Caribbean is financially and operationally qualified to conduct the proposed services without exposing the traveling and shipping public to undue risk.⁸ The carrier has experienced management and appears financially sound. We have confirmed Air Caribbean's compliance with our aircraft liability insurance requirements.

Based on the record now before us, we see no persuasive basis to challenge the merits of Air Caribbean's homeland operating authority or designation. BWIA has not provided persuasive information to find that there is anything in the applicant's financial make-up that indicates that grant of this application would be contrary to the public interest. With respect to BWIA's assertions that Air Caribbean held out its services prior to receiving Department authority, we note that Air Caribbean, on its own initiative, took steps to correct this matter prior to filing for Department authority.⁹ We do not believe that Air Caribbean's actions warrant withholding the requested authority.

Based on the foregoing, we find that our action is consistent with the public interest and our bilateral aviation agreement with Trinidad and Tobago, and that the exemption granted Air Caribbean does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We grant Air Caribbean Company, Ltd. an exemption from § 41301 of Title 49 of the U.S. Code to permit it to engage in scheduled foreign air transportation of persons, property and mail between Port of Spain, Trinidad and Tobago, via the intermediate points Antigua,

⁷ The two majority stockholders of Air Caribbean are Leslie Lucky-Samaroo (49%) and Roland Amar (50%). Both are citizens of Trinidad and Tobago.

⁸ By Memorandum dated November 24, 1999, the Federal Aviation Administration's Flight Standards Service (AFS-50) office notified us that it knew of no reason why we should act unfavorably on Air Caribbean's request.

⁹ We will refer this matter to the Department's Assistant General Counsel for Aviation Enforcement and Proceedings for appropriate action.

Barbados, Grenada, St. Kitts and St. Lucia, and the terminal point Miami, Florida; and to conduct charters in accordance with Part 212 of our rules;

2. The authority granted above shall be effective for one year from the service date of this order;

3. In the conduct of the services authorized above, Air Caribbean must adhere to the conditions set forth in the Attachment to this order;

4. We grant the motions of Air Caribbean and BWIA to file otherwise unauthorized documents;

5. To the extent not granted, we deny any additional requests for relief in Docket OST-99-5612;

6. We may amend, modify or revoke this authority at any time and without hearing; and

7. We will serve a copy of this order on Air Caribbean Limited; BWIA International Airways Limited; American Trans Air, Inc.; the Embassy of Trinidad and Tobago in Washington, D.C.; the Department of State (Office of Aviation Negotiations) and the Federal Aviation Administration (Miami-IFO).

By:

A. BRADLEY MIMS
Deputy 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/report_aviation.asp*

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).

