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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 27th day of January, 2000

Served: February 1, 2000

Application of

**HAINES AIRWAYS, INC.**

for a waiver of the 45-day advance filing requirements of  
14 CFR 204.7 and Notice to resume operations

Docket OST-99-6432 - 3

**ORDER GRANTING WAIVER AND CONFIRMING ORAL ACTIONS**

**Summary**

By this order, we confirm our oral actions of November 1, 1999, finding that Haines Airways, Inc., continues to be fit, willing, and able to engage in the interstate scheduled passenger operations for which it holds certificate authority, and granting the carrier a waiver of the 45-day advance notice provision of section 204.7 of our rules to the extent necessary to permit it to resume operations immediately.

**Background**

Haines Airways, located in Haines, Alaska, holds a certificate under section 41102 of Title 49 of the United States Code ("the Statute") authorizing it to engage in interstate scheduled air transportation of persons, property, and mail.<sup>1</sup>

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<sup>1</sup> This certificate was originally issued in October 1986 by Order 86-10-3. It was reissued by Order 98-7-6 on July 8, 1998, to reflect the standard terms and conditions now attached to such certificates.

The company operated under this authority until October 23, 1999, when it ceased all operations due to a lapse in the aircraft liability insurance required by Part 205 of the Department's rules.<sup>2</sup>

On November 1, 1999, Haines Airways filed a notice in Docket OST-99-6432 of its intent to resume operations and requested a waiver of the 45-day advance filing requirements of section 204.7.<sup>3</sup> It incorporated by reference all of the fitness information it had provided previously to the Department in conjunction with a May 1999 change in its ownership. Haines Airways requested that we act expeditiously on its application so that it could reinstate its scheduled passenger operations as soon as possible.

After reviewing the information filed by Haines Airways and other data available to us, we were persuaded that the carrier continued to be fit. Further, since we had received evidence that Haines Airways had obtained appropriate liability insurance on all of its aircraft, we orally granted its request to resume operations on November 1. That action is confirmed by this order.

### **FITNESS**

In December 1998, the Department instituted a continuing fitness review of Haines Airways due to questions regarding the status of its nonscheduled operations and financial condition. During this review, Haines Airways underwent an ownership change, and we sought information on the impact of the ownership change on the carrier's continuing fitness. Our review was ongoing at the time of the interruption in Haines Airways' insurance coverage and

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<sup>2</sup> Haines Airways' annual renewal date for its insurance coverage was October 24, a Sunday. The company received notice of its next year's premium on Friday, October 22. Due to a significant increase in the annual premium, the company decided not to renew this policy immediately, but to cease its operations temporarily while it explored options for lower cost insurance. By letter dated October 27, 1999, the Department advised Haines Airways that, under section 204.7 of our rules, it had ceased operations and its authority to conduct scheduled passenger service was suspended. On October 28, the company decided to renew its policy and this insurance was reinstated by its issuer. On October 29, Haines Airways registered with the Department as a Part 298 air taxi operator so that it could immediately resume its on-demand passenger and scheduled and on-demand cargo operations, while it re-established its fitness for scheduled passenger operations as required pursuant to section 204.7 of our rules.

<sup>3</sup> Section 204.7 requires a carrier that has ceased all operations for which a fitness finding is required to file a notice of intent to resume such operations, along with updated fitness information, at least 45 days before the intended start-up to allow the Department sufficient time to make a fitness finding.

when the related cessation of operations occurred. Since then, all of the requested information has been supplied.<sup>4</sup>

### **Ownership and Management**

Haines Airways was purchased by Northstar Aviation, an Alaskan corporation wholly owned by Dr. Thomas Hall, on May 4, 1999. Dr. Hall, a U.S. citizen, has varied interests including owning and managing Alaska Coastal Airlines, a Juneau-based float plane company; Bluejacket Enterprises, a property management company; Labyrinth Technology, an accounting, computer networking, and administrative service company; and Chilkat Aviation, an aircraft leasing company. In addition, Dr. Hall has served as President and medical director of Southeast Alaska Pathology since 1995. Prior to that time, he served as a staff pathologist with Olympic Memorial Hospital; as Executive Vice President and co-founder of Neuromedical Systems; as adjunct assistant professor with the UCLA Center for Health Services; and as a medical doctor. He serves as sole director of Haines Airways and as its President.

Mrs. Ruth Danner serves as Haines Airways' General Manager and Chief Financial Officer. In addition to her roles with Haines Airways, Mrs. Danner serves as Chief Financial Officer and business manager of Labyrinth Technology. Prior to joining Dr. Hall's group of businesses in 1998, Mrs. Danner owned and operated Danner Consulting, a company providing consulting services in the areas of accounting and computer services, financial management, strategic planning, and marketing. Before that time, Mrs. Danner worked for nine years with Klukwan, an Alaskan Native corporation where she helped manage the assets awarded under the Alaska Native Claims Settlement Act of 1971.

At the time of our review, Mr. Boyd Hoops served as Haines Airways' Chief Pilot and Director of Operations. Since that time, Mr. Hoops has resigned these positions. His replacement as Chief Pilot is Mr. Frederick (Mike) Jackson, while his replacement as Director of Operations is Mr. John Lewis. Mr. Jackson brings to his position as Haines Airways' Chief Pilot over nine years of experience as a pilot within Alaska, having worked for Cape Smythe Air Service, Wings of Alaska, and Baker Aviation. An Airline Transport Pilot with over 10,000 hours of flight time, Mr. Jackson has also owned and operated an Alaska-based air taxi, Tyme Air, for several years. Haines Airways' Director of Operations, Mr. Lewis, holds a Commercial Pilot license from the FAA and has accumulated over 10,000 hours of flight time. He has previously worked as a line pilot for Wings of Alaska (7 years) and a Director of Operations (1 year) and Chief Pilot (3 years) for Alaska Seaplane Service.

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<sup>4</sup> Haines Airways supplied information on its ownership change in various filings between April 15 and October 28, 1999. This information, which was incorporated by reference in Haines Airways' request to resume operations, has been placed in Docket OST-99-6432. To the extent that confidential treatment was requested for certain of this information, these documents have been accorded such treatment and, as a result, have been placed in the non-public portion of the referenced docket. In addition, since it recommenced operations, Haines Airways has undergone changes in its key technical personnel and has submitted information regarding these changes.

Haines Airways' Director of Maintenance is Mr. Gregory Wartes, an Airframe and Powerplant Mechanic with approximately 9 years of experience in the aviation technical field. Prior to joining Haines Airways, Mr. Wartes served for approximately seven years as Director of Maintenance with Kitty Hawk Aero Tours/Outer Banks Airways, an air taxi operator and general aviation repair station. In addition, he has worked as an aircraft mechanic with another air taxi operator.

After reviewing the biographical and qualifications statements of the above individuals, we conclude that Haines Airways has demonstrated that it continues to possess the management skills and technical ability to conduct scheduled passenger service with small aircraft.<sup>5</sup>

### **Financial Plan and Operating Proposal**

Currently, Haines Airways provides scheduled passenger operations between Juneau and Haines and Gustavus, Alaska, and on-demand passenger and cargo operations throughout Alaska, using a fleet of small aircraft. While the recent operations of Haines Airways have been unprofitable,<sup>6</sup> its overall financial health is adequate. As of September 30, 1999, the company had total current assets of \$29,494 and a current liabilities credit of \$34,686,<sup>7</sup> resulting in positive working capital of \$64,180.<sup>8</sup> Further, Haines Airways currently has positive total equity of over \$353,000. In addition, Dr. Hall has pledged to provide up to \$4.0 million in funds to support the continued operations of Haines Airways.<sup>9</sup> This level of funding far exceeds the carrier's immediate needs. During calendar year 1998 and the nine months ending September 30, 1999, Haines Airways' total expenses were approximately \$1.9 million and \$1.2 million, respectively. While the company has been making some changes in its operating fleet, retiring its Piper-28, -31, and -32 aircraft, and adding new Cessna-206 and-208 aircraft, these changes should not significantly alter the company's overall operating expenses.<sup>10</sup> Haines Airways has forecast that its calendar year 2000 expenses will approximate \$1.5 million.

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<sup>5</sup> 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, and has approved Messrs. Jackson, Lewis, and Wartes for their positions. This evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals.

<sup>6</sup> Haines Airways reported a total operating loss of \$234,030 during calendar year 1998, and a total operating loss of \$353,539 for the nine months ended September 30, 1999.

<sup>7</sup> The credit in current liabilities results from Haines Airways' overpayment of certain federal and state tax obligations.

<sup>8</sup> This working capital situation is improved from its December 31, 1998, position when the company had current assets of \$124,824 and current liabilities of \$181,054, for a negative working capital position of \$56,230.

<sup>9</sup> Merrill Lynch provided third-party verification of Dr. Hall's ability to supply the funds committed.

<sup>10</sup> Haines Airways has retired nine of its aircraft, which had a seating capacity of 4 to 9 passengers each, and replaced them with three newer aircraft having a seating capacity of 5 passengers each.

Under these circumstances, we conclude that Haines Airways will continue to have access to resources sufficient to cover its operating costs so as not to pose an undue risk to consumers or their funds.

### **Compliance Disposition**

We also conclude that Haines Airways has 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.

Haines Airways' past compliance disposition has been satisfactory,<sup>11</sup> and, since undergoing its change in ownership in May, has remained so.<sup>12</sup> In addition, Haines Airways has stated that there are no actions or outstanding judgments against its owner or any of 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.

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<sup>11</sup> We last reviewed the compliance disposition of Haines Airways in 1997 as a result of its purchase by Mountain Aviation. That review found that, while Haines Airways had had two fatal accidents since commencing certificated operations in 1986, no FAA action had been taken against the company for these accidents. Further, at that time, the FAA advised us that the operations of Haines Airways were being conducted in a satisfactory manner. In early 1998, Mountain Aviation entered into a plea agreement with the Environmental Protection Agency as a result of that company's improper removal of asbestos during a 1997 renovation project at its Sitka, Alaska, aircraft hanger. No final conclusions regarding the impact of this matter on the overall compliance disposition of Haines Airways was made by the Department. However, in light of the fact that Mountain Aviation no longer holds any ownership interest in Haines Airways, this issue is now moot. In addition, in March 1999, Haines Airways filed notice of its intent to terminate its scheduled service at Kake, Alaska. Under the Department's regulations, section 323.3(a)(5), a carrier must provide 90-day notice of its intent to terminate service when that suspension at a community would reduce by 33 percent or more the total available seats of all carriers linking that point to FAA-designated hubs. While Haines Airways provided the required notice, it subsequently ceased the operations at issue on less than 90 days notice. This action by Haines Airways was taken under its previous ownership and management and, after being contacted by the Department about this action, the carrier reinstated service to Kake. This service was maintained until May 29, 1999, when the Department released Haines Airways from any obligation to continue service to Kake (*see* Order 99-5-6, served May 10, 1999).

<sup>12</sup> Our search of FAA records found that Dr. Hall holds a private pilot's license and, as a private pilot, has had one accident (in June 1997) and received two warning letters (one in September 1997, the other in October 1998) from the FAA for alleged violations of applicable rules. While these alleged violations are troubling, Dr. Hall does not serve as a pilot for Haines Airways, nor is there any indication that his involvement with the carrier has negatively impacted on its compliance disposition. Since being purchased by Dr. Hall in May 1999, Haines Airways has not had any certificate actions taken against it by the FAA, nor has it experienced any accidents or incidents. In addition, the carrier has continued to file its required reports with our Office of Airline Information in a timely manner.

### CITIZENSHIP

We find that Haines Airways remains a citizen of the United States as defined in section 40102(a)(15).<sup>13</sup> As noted earlier in this order, Haines Airways sole owner and director is Dr. Thomas Hall, a U.S. citizen. In addition, all of the company's key personnel are U.S. citizens. Further, Haines Airways 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 Haines Airways rests with non-U.S. citizens.

### WAIVER

Based on the above, we found that Haines Airways continues to be fit, willing, and able to conduct the interstate scheduled passenger operations authorized by its certificate and that it was in the public interest to grant its request for a waiver of the 45-day advance notice requirements of section 204.7 to enable it to resume its operations immediately. We orally notified Haines Airways of these decisions on November 1, 1999, which we confirm in this order.

**ACCORDINGLY**, acting under authority assigned by the Department in its Regulations, 14 CFR 385.12:

1. We confirm our oral actions of November 1, 1999, finding that Haines Airways, Inc., is fit, willing, and able to resume conducting interstate scheduled passenger air transportation under its certificate of public convenience and necessity, and granting the application of Haines Airways, Inc., in Docket OST-99-6432, for a waiver of the 45-day advance notice requirement of section 204.7 of the Department's regulations to permit it to resume its certificated operations immediately.
2. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

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<sup>13</sup> 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.

The actions confirmed in this order were effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

**RANDALL BENNETT**  
Acting Director  
Office of Aviation Analysis

(SEAL)

*An electronic version of this document is available on the World Wide Web at:  
<http://dms.dot.gov>*

**SERVICE LIST FOR HAINES AIRWAYS, INC.**

Attachment A

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