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Order 2000-7-10

Served: July 11, 2000



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

Issued by the Department of Transportation
on the 10th Day of July, 2000

Fitness Determination of

NORTHWEST SEAPLANES, INC.

OST-00-6833-6

as a commuter air carrier under 49 U.S.C. 41738

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF COMMUTER AIR CARRIER AUTHORITY**

Summary

By this order, we tentatively find that Northwest Seaplanes, Inc., is fit, willing, and able to provide scheduled passenger air transportation as a commuter air carrier.

Background

On January 27, 2000, Northwest Seaplanes, Inc., an operating Part 298 air taxi operator based in Renton, Washington, filed an application for commuter air carrier authority. It accompanied its application with the information required by section 204.3 of our regulations for an examination of its fitness.¹

Section 41738 of Title 49 of the United States Code ("the Statute") and section 298.21(d) of the Department's regulations (14 CFR 298.21(d)) direct us to determine whether companies proposing to provide scheduled passenger service as commuter air carriers are "fit, willing, and able" to perform such service, and to ensure that all operations relating to this service conform to the safety standards established by the Federal Aviation Administration (FAA). 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) has access to financial resources which are sufficient to

¹ Northwest Seaplanes supplemented its application on April 25, May 11, and June 15, 2000.

commence the proposed 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.

Based on our review of Northwest Seaplanes' application and the safety and compliance information on the applicant received from the FAA and the National Transportation Safety Board (NTSB), we tentatively conclude that Northwest Seaplanes is a U.S. citizen and has met the fitness test to conduct commuter operations. We will, however, give interested persons an opportunity to show cause why we should not adopt as final our tentative determination that Northwest Seaplanes is fit, willing, and able to provide commuter service.

The Carrier

Northwest Seaplanes was organized and incorporated under the laws of the State of Washington in 1989.² The carrier currently provides on-demand passenger operations on a seasonal basis to destinations in Western Washington and coastal British Columbia. It maintains an operational fleet of four 6-seat deHavilland DHC-2 and two 8-seat Piper PA-31-350 aircraft. If granted its requested commuter authority,³ Northwest Seaplanes intends to offer scheduled passenger service to points it currently serves as an air taxi. Specifically, it intends to offer its proposed service between Renton and five destinations within the San Juan Islands (Friday Harbor, Roche Harbor, Fisherman Bay, West Sound, and Rosario Resort). Because of the seasonality of the markets, Northwest Seaplanes will operate four round trips per day between these points during the summer (from May 1 to September 30) and two round trips per day during the remainder of the year (from October 1 to April 30). The carrier indicates that, initially, it will use one 6 seat deHavilland DHC-2 aircraft and then introduce three additional DHC-2s as the demand for its service increases. It plans to continue using its two Piper aircraft for its on-demand service throughout the Pacific Northwest and coastal British Columbia.

Managerial Competence

Mr. Clyde E. Carlson, the carrier's sole owner, has served as Northwest Seaplanes' President and Director of Operations since its inception in 1989. Prior to founding Northwest Seaplanes, he served for six years as President and operations consultant

² Northwest Seaplanes was started by Mr. Clyde E. Carlson and Mr. Clyde W. Summerville. In 1998, Mr. Summerville relinquished all interests in the carrier to Mr. Carlson, who is the carrier's sole owner.

³ Northwest Seaplanes was previously found fit to provide service as a commuter air carrier (see Order 93-8-19) and received effective commuter authorization on July 24, 1994. However, in August 1998, Northwest Seaplanes advised the Department that it was suspending its scheduled service as of September 1, 1998. Because the carrier did not recommence its scheduled operations within the one year allowed by section 204.7 of our rules, we revoked its commuter authority in September 1999 for reason of dormancy.

with Lake Union Air Service, a carrier that he owned. For the prior seven years, Mr. Carlson was co-owner and served as President and Director of Operations with Western Air Charters. He was previously employed as a refrigeration mechanic with the Boeing Company and as an aircraft mechanic with the U.S. Air Force.

Mr. Shane Carlson, an Airline Transport Pilot with 2,700 hours of recorded flight time, has been employed by Northwest Seaplanes as a line pilot for five years and recently became its Chief Pilot. Prior to his involvement with the applicant, Mr. Carlson was a pilot for two years with Hagen Top Foods and Port Townsend Airways.

Mr. Christopher Edwards, an Airframe and Powerplant Mechanic, has been employed by Northwest Seaplanes as a line mechanic and inspector for six years and became the carrier's Director of Maintenance during the last year. Before joining Northwest Seaplanes, Mr. Edwards was employed as a line mechanic and pilot for thirteen years with companies that included JVC Aviation, Lake Union Air Service, Strefinger Aircraft, and Bellair.

In view of the experience and background of the applicant's key personnel, and the fact that the carrier is currently providing on-demand service in the same area and using the same aircraft, we tentatively conclude that Northwest Seaplanes has demonstrated that it possesses the management skills and technical ability to conduct its proposed limited scheduled passenger operations as a commuter.⁴

Financial Plan and Operating Proposal

Northwest Seaplanes proposes to provide seasonal scheduled passenger service between Renton and five destinations within the San Juan Islands by offering four round trips per day between those destinations from May 1 to September 30 and two round trips per day from October 1 to April 30 initially using one 6-seat deHavilland DHC-2 aircraft and then introducing three additional DHC-2s when the demand for its seasonal service rises.

Northwest Seaplanes has furnished a financial forecast for its first year of commuter operations based on its historical operating experience. The applicant anticipates that its total operating expenses for that first year will approximate \$240,000. The carrier has indicated that its pre-operating expenses will be minimal since it already has the aircraft, personnel, and other resources necessary for the proposed scheduled service. We have examined the applicant's cost forecasts and find them to be reasonable. Based on our analysis of Northwest Seaplanes projections, we have concluded that Northwest

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.

Seaplanes will need access to approximately \$60,000 to meet our financial fitness criteria.⁵

Northwest Seaplanes has indicated that it will utilize its own resources to support its commuter service. The carrier provided copies of its U.S. Income Tax Returns for the calendar years 1997 and 1998. The carrier also furnished its income statements for the nine months ended September 30, 1999, and for the twelve months ended December 31, 1999, and its accompanying balance sheets at September 30, 1999, and December 31, 1999. According to the carrier's tax returns, Northwest Seaplanes ended 1997 with a net loss and 1998 with a modest net income. Its balance sheets as of September 30 and December 31, 1999, showed that the carrier is in sound financial condition. Its December 31, 1999, financial position includes a positive working capital balance of \$73,392, a solid current assets to current liabilities ratio of 1.57:1, positive stockholders' equity of \$543,812, and long-term debt of \$451,774. Northwest Seaplanes' income statement for the nine months ended September 30, 1999 reported profitability and its income statement for twelve months ended December 31, 1999, reported a net income of \$10,472. Northwest Seaplanes also filed a statement from Bank of America that verified that, as of June 14, 2000, the carrier had funds available of nearly \$81,000.

In light of the foregoing, we tentatively conclude that Northwest Seaplanes will have sufficient financial resources available to enable it to institute its proposed commuter air service without imposing an undue risk to consumers or their funds.

Compliance Disposition

The applicant stated that there have been no formal complaints filed or orders issued finding it, its owner or key personnel in violation of the Statute; nor have any charges of unfair, deceptive or anticompetitive business practices, or of fraud, felony or antitrust violations been brought against any of these parties. Northwest Seaplanes further stated that there are no actions or outstanding judgments filed against it, its owner or key personnel.

Our search of FAA and NTSB records found that Northwest Seaplanes has not had any accidents or incidents and that the FAA presently has no enforcement cases open against Northwest Seaplanes, its owner, or any of its key personnel. In addition, the FAA has stated that Northwest Seaplanes holds a Part 135 Air Carrier Certificate and

⁵ In evaluating an applicant's financial fitness, the Department generally asks that the company have access to financial resources sufficient to cover all pre-operating expenses plus a working capital reserve equal to the operating expenses that would be incurred during three months of "normal" commuter operations. Because projected operations during the first several months of air transportation services frequently do not include all costs 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.

Operations Specifications and that the process to issue amended Operations Specifications authorizing scheduled passenger operations to the carrier has been progressing satisfactorily, and that it knows of no reason why we should act unfavorably on Northwest Seaplanes' application.

Based on these considerations, we tentatively conclude that Northwest Seaplanes 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.

CITIZENSHIP

The Statute requires that authority to engage in air transportation operations be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section specifies 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.

Northwest Seaplanes is a corporation organized under the laws of the State of Washington. The applicant has provided an affidavit attesting that it is a U.S. citizen and has affirmed that its sole owner, Clyde Carlson, and all of its key personnel are U.S. citizens. Furthermore, there is nothing in the record that would lead us to conclude that control of this applicant is not currently with United States citizens.

In view of the foregoing, we tentatively conclude that Northwest Seaplanes is a U.S. citizen and that it is fit, willing, and able to provide the scheduled passenger service it proposes as a commuter.

OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions made here should not be made final; answers to objections will be due within 7 days thereafter. We expect that persons objecting to our tentative findings and conclusions will support their objections with relevant and material facts. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will enter an order making final our tentative findings and conclusions.

EFFECTIVE COMMUTER AUTHORIZATION CONDITIONS AND LIMITATIONS

In the event that we find Northwest Seaplanes fit, willing, and able to conduct its proposed scheduled passenger operations, we will issue to it a Commuter Air Carrier Authorization. However, that authorization will not become effective until the carrier

has fulfilled all of the requirements for effectiveness as set forth in the Terms, Conditions, and Limitations attached to its authorization. Among other things, this includes our receipt of an Air Carrier Certificate and amended Operations Specifications from the FAA authorizing scheduled passenger operations under Part 135.

Our conclusion as to Northwest Seaplanes fitness is based on the operating plans described in its application. These plans indicate that Northwest Seaplanes will utilize a total of four 6-seat deHavilland DHC-2 aircraft in its commuter operations, while continuing to use two 8-seat Piper PA-31-350 aircraft in its on-demand operations, all of which are operated under Part 135 of the Federal Aviation Regulations. Our fitness findings might no longer apply if the carrier were to substantially change the scope of its operations through the introduction of larger aircraft (*i.e.*, aircraft having 10 passenger seats or more). Therefore, we propose to limit any commuter authority issued to Northwest Seaplanes to operations with aircraft having 9 passenger seats or less. Should Northwest Seaplanes desire to operate larger aircraft, it must first be determined fit for such operations.

We remind Northwest Seaplanes of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a company is found fit initially, it must remain fit in order to hold its authority. To be assured that commuter air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent major changes they may undergo in areas affecting fitness. In this regard, should Northwest Seaplanes propose any substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our regulations.⁶ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under the Statute.⁷

⁶ Northwest Seaplanes may contact our Air Carrier Fitness Division to report proposed substantial changes and to determine what additional information, if any, will be required under section 204.5. If Northwest Seaplanes 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 commuter authority.

⁷ We also remind Northwest Seaplanes about the requirements of section 204.7 of our rules which provides among other things, that: (1) the commuter authority granted to a company shall be revoked if the company does not commence scheduled passenger operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences the scheduled passenger operations for which it was found fit and subsequently ceases such operations, it cannot resume such operations unless its fitness has been redetermined; and (3) if the company does not resume commuter operations within one year of its cessation, its authority shall be revoked for dormancy. The carrier must file a notice of its intent to resume operations at least 45 days prior to said resumption. This notice shall contain updated fitness information.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue an order finding that Northwest Seaplanes, Inc., is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed fitness findings set out here to file such objections with Department of Transportation Dockets, 400 7th Street, SW, Room PL-401, Washington, D.C. 20590 in Docket 00-6833 and serve them on all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections will be due within 7 days thereafter.
3. We will accord full consideration to the matters and issues raised in any timely and properly filed objections before we take further action.
4. In the event no one files objections, we will deem all further procedural steps waived, and we will enter an order making final the tentative findings and conclusions set out here and awarding Northwest Seaplanes, Inc., a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.⁶
5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a notice 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*

⁶ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



Specimen
Terms, Conditions, and Limitations
NORTHWEST SEAPLANES, INC.

is authorized to engage in scheduled passenger air transportation operations as a commuter air carrier.

This authority is subject to the following provisions:

- (1) The authority to conduct scheduled passenger operations 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 scheduled passenger operations, 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 requirements of 14 CFR Part 298 and any other regulations prescribed by the Department of Transportation for the services authorized here, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

- (4) *The holder may not operate aircraft designed to have a maximum passenger capacity of more than 9 seats.*
- (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 this authority 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 authority.*
- (8) *The holder shall maintain in effect at all times with the Department of Transportation current information on OSI Registration Form 4507.*
- (9) *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.*
- (10) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.*
- (11) *In the event that the holder does not commence actual flying operations as a commuter air carrier under this authority within one year of the date of the Department's determination of its fitness, its commuter authority shall be revoked for dormancy. Further, in the event that the holder commences but subsequently ceases all scheduled passenger operations, the authority granted here 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.*

NORTHWEST SEAPLANES, INC.

Attachment A

MR CLYDE CARLSON
PRESIDENT
NW SEAPLANES INC
PO BOX 1845
RENTON WA 98057

AMER ASSOC OF ARPT EXECS
4224 KING STREET
ALEXANDRIA VA 22302

MR JD MEALOR
AIRLINE DATA COOR
INNOVATA LLC
3915 OLD MUNDY MILL RD
OAK BROOK IL 60523

MR BRADLEY PEARSON
MGR FLT STAND DIV ANM-200
FAA NW MTN REGION HDQTRS
1601 LIND AVENUE SW
RENTON WA 98055

MS JONI MOUNT
PRODUCT MANAGER
TRANSP PRINT PRODUCTS
OFFICIAL AIRLINE GUIDES
2000 CLEARWATER DR
OAK BROOK IL 60523

MR GEORGE THOMPSON
REGIONAL COUNSEL, ANM-7
FAA NW MTN REGION HDQT
1601 LIND AVENUE SW
RENTON WA 98055

MR RICHARD DUTTON
ASST MGR CSET
FEDERAL AVIATION ADMIN
AFS-900 SUITE 203B
45005 AVIATION DRIVE
DULLES VA 20166-7537

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

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

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

MR DAVID MAY
FAA SEATTLE FSDO
1601 LIND AVENUE SW
RENTON WA 98055

DIR OFF OF AIRLINE INFO
DEPT OF TRANSP
400 SEVENTH ST SW, K-25
WASHINGTON DC 20590