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Order 2000-12-14



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

Issued by the Department of Transportation
on the 20th Day of December, 2000

Served: December 20, 2000

In the matter of the 45-day notices of

ALASKA ISLAND AIR, INC.

to resume interstate scheduled passenger operations under its
certificate of public convenience and necessity

Dockets OST-95-249 - 16
OST-00-6948 - 6

In the matter of the revocation of the interstate scheduled
passenger air transportation certificate issued to

ALASKA ISLAND AIR, INC.

pursuant to the provisions of §204.7 of the Department's
Regulations

Docket 40925

ORDER ON REVIEW

By this order, the Department is granting a petition filed by Alaska Island Air, Inc.(AIA) for review of the decision of the Acting Director of the Office of Aviation Analysis taken in Order 2000-10-24 which dismissed notices of intent filed by AIA under section 204.7 of our rules (14 CFR 204.7) to resume operations and revoked AIA's certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail. Upon review of the record, we find that the action taken by the staff in Order 2000-10-24 was appropriate and, therefore, we will affirm that action.

Background

By Order 82-11-12, AIA was found fit, willing and able to conduct interstate air transportation of persons, property and mail as a certificated air carrier. The carrier's certificate was made effective on November 23, 1982.

AIA ceased operations on June 1, 1995, when the Federal Aviation Administration (FAA) suspended its authority for a 30-day period. In accordance with section 204.7, AIA's DOT certificate was automatically suspended as a result of its cessation of operations. Although the carrier subsequently filed a request with the Department (in Docket OST-95-249) to be allowed to

recommence operations once the FAA suspension was lifted, we notified it on June 21, 1995, that we were deferring action on its request due to our concerns over the number and seriousness of the violations which led to the suspension and the fact that there were a number of other open enforcement cases against the carrier which were also serious in nature. After the FAA authority was restored on July 1, 1995, AIA began operations as an intrastate on-demand air carrier. These operations continue today.¹

On February 15, 2000, AIA filed another notice with the Department (in Docket OST-00-6948) of its intent to resume scheduled passenger operations under its certificate. The carrier submitted updated fitness information which, among other things, indicated that there had been a complete change in ownership and management.² However, because of some FAA concerns about the lack of experience of the new owners and managers in running an air carrier operation, we initially deferred action on AIA's application.

On October 3, 2000, AIA withdrew its notice of intent to resume operations under the dormant DOT certificate. In doing so, the carrier indicated that it was currently conducting on-demand service and was working to satisfy the FAA's requirements to operate as a scheduled passenger carrier. However, due to the uncertainty as to when it would complete these steps, it advised the Department that it had decided not to pursue the resumption of certificated operations at that time. Thus, on October 20, 2000, the Acting Director of the Office of Aviation Analysis, acting under authority assigned by the Department in 14 CFR 385.12, issued Order 2000-10-24 dismissing AIA's notices of intent to resume operations. The staff also revoked AIA's certificate, noting that the certificate had been dormant since June 1995, that section 204.7 provides for the revocation of dormant certificates after one year if a carrier has not re-established its fitness to operate, and that the certificate had not been revoked earlier because of the pendency of the notices to resume operation. The staff also noted that, since the carrier was not certain as to when it would be in a position to operate under the certificate, but was currently conducting operations as an on-demand air taxi which did not require it to hold certificate authority, revocation of the long-dormant certificate would in no way affect its current operations. Finally, the staff made it clear that at such time as the carrier was in a position to pursue a request for a certificate, it was free to file such an application.

Petition for Review

On November 2, AIA submitted a late-filed petition for review of the order revoking AIA's certificate authority.³ AIA states that, while it does not object to the order with respect to the dismissal of its notices to resume operations, it does object to the revocation of its certificate authority. AIA argues that the delay in obtaining its FAA scheduled Operations Specifications has been due primarily to lack of manpower at the FAA to handle AIA's application and to decisions regarding the transfer of oversight of AIA's FAA certificate from the Flight Standards District Office (FSDO) in Fairbanks to the one in Anchorage. AIA states that these delays were beyond its control, but that it is now making progress in obtaining its scheduled authority. AIA further argues that there is no question that it meets the DOT fitness requirements and that the

¹ See Order 2000-10-24 for a more detailed history of the carrier.

² Moreover, we received notification from the FAA that all of the pending enforcement actions against AIA under its previous owner had been resolved.

³ AIA indicates that it did not receive the order revoking the certificate until the last day of the 10-day answer period provided in the order. We will grant its request to file late.

carrier would never have been allowed to conduct on-demand operations if the FAA had any significant concerns about its ability to operate.

Decision

While AIA has stated that the delays in activating its certificate have been due to problems caused by the FAA, we have been advised by staff from the Anchorage FSDO that it has not received an application from AIA proposing to operate scheduled passenger service. AIA currently operates under Part 135 of the Federal Aviation Regulations as a single pilot operator, which has been the case since the carrier was purchased earlier this year. The FAA indicates that, in order to upgrade this operational status, AIA would need to establish a training program, develop general operations manuals, and hire additional qualified management personnel. However, it is uncertain as to when the carrier will be able to meet these qualifications.

As indicated in Order 2000-10-24, our rules provide for the revocation of dormant certificates if after one year a carrier has not re-established its fitness to operate. AIA's certificate has been dormant since June 1995. It is not our typical practice to allow a certificate to remain in a dormant state for such a long period of time. We did so in this case because of the pendency of the requests to resume operations. However, in light of the uncertainty as to when AIA will be in a position to resume certificated operations, it is appropriate to revoke AIA's DOT certificate. As indicated in Order 2000-10-24, the revocation of the certificate should in no way affect its current operations or its FAA authority. Furthermore, AIA has provided no evidence of harm that it will suffer as a result of the revocation, since it is free to file a new application to operate scheduled passenger service at such time as it is ready to pursue such authority.

Under these circumstances, we find no reason to overturn the staff's action revoking AIA's certificate.

ACCORDINGLY:

1. We grant the petition for review filed by Alaska Island Air, Inc., and upon review, affirm the staff action taken in Order 2000-10-24 revoking the certificate issued to Alaska Island Air, Inc., by Order 82-11-12.
2. We grant Alaska Island Air, Inc.'s request to file its petition late.
3. We will serve a copy of this order on the persons listed in Attachment A.

By:

FRANCISCO J. SANCHEZ
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>*

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