

Order 2000-10-2

Served: October 2, 2000

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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 2nd day of October, 2000

Application of

**AERO MICRONESIA, INC.  
d/b/a ASIA PACIFIC AIRLINES**

for renewal of its certificates of public convenience and  
necessity to engage in interstate and foreign charter air  
transportation of property and mail

Dockets OST-98-3404 - 26  
OST-98-3479 - 25

**ORDER ISSUING PERMANENT CERTIFICATE AUTHORITY**

**Summary**

By this order, we find that Aero Micronesia, Inc. d/b/a Asia Pacific Airlines (Asia Pacific) continues to be fit, willing, and able to provide interstate and foreign charter air transportation of property and mail, and we reissue to it certificates of public convenience and necessity making permanent the authority it now holds on a temporary basis.

**Background**

By Orders 98-10-6 and 98-11-11, served October 5 and November 16, 1998, respectively, we found Asia Pacific to be fit, willing, and able to conduct all-cargo charter operations under section 41102 of Title 49 of the United States Code ("the Statute") for a period of one year. The one-year limitation was imposed due to our concerns about whether the troublesome compliance history of companies related to the applicant would have a deleterious effect on Asia Pacific's own disposition to comply with the laws and regulations applicable to its operations.<sup>1</sup> The certificates became effective on March 29, 1999,<sup>2</sup> and, hence, would expire on March 29, 2000, unless Asia Pacific had filed a timely application for permanent authority, which it did on February 14, 2000.<sup>3</sup>

In support of its request for permanent authority, Asia Pacific provided updated fitness information. Upon review of the information submitted, together with information from the

<sup>1</sup> See discussion in Show Cause Order 98-9-20, served September 18, 1998, at 8-9.

<sup>2</sup> See Order 99-3-30, served April 6, 1999.

<sup>3</sup> The orders issuing the carrier authority required that it file a renewal application with updated fitness information at least 45 days prior to the expiration date. Since the expiration date, the carrier's authority to operate was continued in accordance with §377.10 of the Department's rules.

Federal Aviation Administration (FAA), we conclude that Asia Pacific continues to be fit, willing, and able to conduct the operations for which it holds authority. As more fully discussed below, the FAA reports that the carrier is currently conducting its operations in a satisfactory manner, and other information available indicates that the carrier has otherwise maintained an acceptable compliance record. Therefore, we will reissue its certificates on a permanent basis.

### **The Carrier**

Asia Pacific currently operates one B-727-200 aircraft in cargo service in the Pacific area. The company's primary operation includes transporting fresh fish between the Federated States of Micronesia (FSM) and Palau, Guam, and Saipan. It also operates a weekly charter flight between Hong Kong and Saipan transporting fabric, and has recently received a U.S. Postal Service contract to transport mail between Honolulu and Saipan via Majuro and the FSM.

Although the carrier has no specific plans at this time to undergo any substantial changes in its service, Asia Pacific indicates that, if sufficient traffic develops, it may add a second aircraft to its fleet.<sup>4</sup>

### **Management**

Asia Pacific has not undergone any significant changes in management personnel since we last found it fit in March 30, 1999. Mr. Michael R. Quinn continues to serve as the carrier's President and on the board of directors. Mr. Jerry L. Tan serves as Secretary, Treasurer and is also a member of the board. Mr. George Chiu continues to serve as Vice President of Finance and a member of the board. Mr. Robert Walker continues in the position of Vice President of Marketing. Mr. Stephen L. Leavelle continues as Director of Operations. Ms. Alicia Atalig, who was serving as Director of Safety at that time, has since assumed the position of Chief Pilot. The qualifications of all of these individuals were discussed in Order 98-9-20. In addition, Mr. Idris Parry, formerly the carrier's Chief Inspector, is now its Director of Maintenance. His qualifications were discussed in Order 99-3-30. New to the company since our last review are Mr. Joseph San Agustin, Director of Safety, and Mr. Theodore Escobar, Chief Inspector.<sup>5</sup>

Upon review of the experience and background of Asia Pacific's key personnel and the fact that most of them have been managing the carrier's operations since its inception, we conclude that

<sup>4</sup> The carrier is currently authorized to operate up to two aircraft without having to undergo any further fitness review.

<sup>5</sup> Mr. Agustin received his aviation training as a pilot while serving in the U.S. Navy from October 1992 to March 1999. He joined Asia Pacific as Director of Safety in May 1999. Mr. Agustin holds an FAA Airline Transport Pilot certificate and has accumulated over 3,900 flight hours. Mr. Escobar began his aviation career with the U.S. Air Force as an aircraft mechanic. After being employed by Dynalotron Corporation as an aircraft mechanic from December 1962 to July 1965, he served in various maintenance supervisory positions with Continental Airlines from July 1965 to February 1978 and from September 1981 to July 1986. In the interim, he was employed by West Coast Grocery as a Vehicle Maintenance Manager and as Supervisor of Terminal Maintenance at Los Angeles Airport. Upon leaving Continental in July 1986 until joining Asia Pacific as Chief Inspector in August 1999, he was employed by Dynair Corporation as Maintenance Manager, Hawaiian Airlines as Chief Inspector and Director of Quality Control, and Airport Group International as Manager of Fueling and Technical Services. Mr. Escobar holds an FAA Airframe and Powerplant Mechanic certificate.

Asia Pacific has the necessary management skills and technical ability to continue to conduct its operations.

### **Financial Posture**

Asia Pacific provided unaudited financial statements for the year ended December 31, 1999, and for the five months ended May 31, 2000.<sup>6</sup> As of December 31, 1999, the company had current assets of \$823,500 and current liabilities of \$4.5 million, giving it negative working capital of approximately \$3.7 million and a current ratio of 0.18:1. It had negative stockholders' equity of approximately \$1.7 million. As of May 31, 2000, the carrier had a current ratio of .34:1, negative working capital of \$3.3 million and negative stockholders' equity of \$1.3 million.

However, as this company is closely held and many of its debts are owed to related companies and shareholders, its ability to pay its vendors is not accurately reflected by these numbers. If we remove from current liabilities the debts owed to related parties (approximately \$3 million as of May 31, 2000), Asia Pacific's current ratio improves to 1.3:1 and its working capital position to \$450,297. Because the related parties have a vested interest in the carrier, the adjusted current ratio may be a better indicator of the company's ability to pay its debts when due and to continue operations. Moreover, after a net loss of \$1.85 million for the year ended December 31, the carrier had a small net profit of \$21,500 for the five months ended May 31.

In view of the above, it appears that Asia Pacific continues to meet our financial standard and has access to sufficient financial resources to conduct its operations without posing any undue risk to its consumers or their funds.

### **Compliance Disposition**

As indicated above, Asia Pacific's certificate authority was initially limited to period of one year due to our concerns about the troublesome compliance history of companies related to the carrier. In this regard, we noted in Order 98-9-20 that Asia Pacific is a subsidiary of Consolidated Transportation Services, Inc. (CTSI), a company engaged in international air and ocean freight forwarding services. CTSI is a wholly owned subsidiary of Tan Holdings Corporation (Tan), which has a number of other subsidiaries engaged in various businesses including garment manufacturing, real estate development, and commercial fishing. Tan, in turn, is owned by members of the Tan family through six family trusts. Mr. Siu Lin Tan, the head of the Tan family, serves as trustee for all of the trusts.

In the course of reviewing Asia Pacific's applications for initial certificate authority, we discovered various lawsuits and other charges of violations of federal laws involving the Tan companies, in particular those involved in garment manufacture, by the Departments of Labor and Interior and the Occupational Safety and Health Administration. While most of these charges involved problems in the late 1980's or early 1990's, they were nevertheless serious enough to cause us question whether Asia Pacific could be relied upon to operate in full

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<sup>6</sup> Accompanying its application for renewal of its certificates, on February 14, 2000, Asia Pacific filed a motion to withhold the December 1999 financial statements from public disclosure. On September 13, 2000, the carrier withdrew that request.

compliance with applicable rules while under the ownership of Tan. We concluded that the prudent course of action would be to limit Asia Pacific's authority to a period of one-year, during which time we would monitor its operations and compliance disposition.

As part of its application for renewal of its authority, Asia Pacific supplied information related to certain pending class action lawsuits involving Tan and a number of other garment manufacturers and major clothing retailers that were filed in January 1998. One of the lawsuits contains a variety of claims alleging that retailers and manufactures conspired to violate various laws relating to the employment of Chinese workers in Saipan. Other claims relate primarily to alleged exorbitant recruitment fees charged by middlemen. The second lawsuit alleges that manufacturers failed to pay overtime in violation of the Fair Labor Standards Act. The carrier contends that the lawsuits have no merit and that Tan is vigorously defending itself in these suits. Moreover, it argues that these suits are not relevant to Asia Pacific since the airline is independently managed by a team of aviation professionals.

Asia Pacific also states that, since its most recent fitness determination, there have been no actions or outstanding judgments filed against it or its key personnel.

Our review of FAA records reveals that, although there is one open FAA enforcement action pending against the carrier,<sup>7</sup> it has been involved in no accidents or incidents. Moreover, the FAA indicates that it knows of no reason why the Department should act unfavorably on the carrier's application for renewal of its certificates.

On the basis of this information, we believe that Asia Pacific continues to have the necessary disposition to comply with the laws and regulations governing its operation. The carrier appears to be conducting its operations in a satisfactory manner, and there is no indication that any of the pending class action suits involving related companies are indicative of Asia Pacific's compliance disposition. Moreover, since Asia Pacific was found fit, there have been no further allegations by government entities of violations of Federal laws involving the Tan companies. We will, however, direct Asia Pacific to keep us advised as to the outcome of these private lawsuits. Should the courts find that Tan has engaged in unlawful or criminal activities, we will re-evaluate whether to take further action with regard to Asia Pacific's continuing fitness.

### CITIZENSHIP

We find that Asia Pacific continues to meet the citizenship requirements of the Statute. There have been no changes in ownership since the carrier was found fit.<sup>8</sup> Furthermore, there is nothing in the record that would lead us to conclude that control of this applicant is not with citizens of the United States.

<sup>7</sup> This action was a result of a failure to maintain certain flight records for a required three-month period. While a civil penalty could be imposed, the FAA has indicated that the case is not likely to result in any adverse action against Asia Pacific's certificate.

<sup>8</sup> See Order 98-9-20 at 3 for a detailed description of the ownership structure.

In conclusion, on the basis of all of the foregoing, we find that Asia Pacific continues to be fit to conduct its certificated operations and that it should be reissued certificates to engage in interstate and foreign charter all-cargo air transportation without restriction as to duration.

**ACCORDINGLY,**

1. We find that Aero Micronesia, Inc. d/b/a Asia Pacific Airlines continues to be fit, willing, and able to engage in interstate and foreign charter air transportation of property and mail.
2. We reissue the section 41102 certificate issued previously to Aero Micronesia, Inc. d/b/a Asia Pacific Airlines authorizing it to engage in interstate charter air transportation of property and mail in the attached form and subject to the attached terms, conditions, and limitations.<sup>9</sup>
3. We dismiss, as moot, the request of Aero Micronesia, Inc. d/b/a Asia Pacific Airlines to withhold from public disclosure information submitted pursuant to Rule 12 on February 14, 2000.
4. Should Aero Micronesia, Inc. d/b/a Asia Pacific Airlines propose to operate more than two aircraft, it must first notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to placing the additional aircraft into service.
5. We will serve a copy of this order of the persons listed in Attachment A.

By:

**FRANCISCO J. SANCHEZ**  
Assistant Secretary for Aviation  
and International Affairs

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

(SEAL)

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<sup>9</sup> Pursuant to 49 U.S.C. 41307, issuance of foreign authority to Asia Pacific Airlines is subject to Presidential review and will be handled in a separate order.



**Certificate of Public Convenience and Necessity  
for  
Interstate Charter Air Transportation**

*This Certifies That*

**AERO MICRONESIA, INC.  
d/b/a ASIA PACIFIC AIRLINES**

*is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate charter air transportation of property and mail.*

*This Certificate is not transferable without the approval of the Department of Transportation.*

*By Direction of the Secretary*

*Issued by Order 2000-10-2  
On October 2, 2000  
Effective on October 2, 2000*

*Francisco J. Sanchez  
Assistant Secretary for  
Aviation and International Affairs*

*\*As reissued  
by Order 2000-10-2  
Attachment*



*Terms, Conditions, and Limitations*

**AERO MICRONESIA, INC.  
d/b/a ASIA PACIFIC AIRLINES**

*is authorized to engage in interstate charter air transportation of property and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.*

*This authority is subject to the following provisions:*

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).*
- (3) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.*
- (4) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (5) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate 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 certificate.*
- (6) The holder is not authorized to engage in air transportation operations between points within the State of Alaska.*

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*\*This certificate is being reissued to remove the condition limiting its effectiveness to a one-year period.*

(7) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(f)), it must first comply with the requirements of 14 CFR 204.5.

(8) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate 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.

**SERVICE LIST FOR AERO MICRONESIA, INC.  
d/b/a ASIA PACIFIC AIRLINES**

JOANNE YOUNG  
DAVID KIRSTEIN  
BAKER & HOSTETLER LLP  
WASHINGTON SQUARE SUITE 1100  
1050 CONNECTICUT AVE NW  
WASHINGTON DC 20036

MR MICHAEL R QUINN  
PRESIDENT  
AERO MICRONESIA INC  
d/b/a ASIA PACIFIC AIRLINES  
156 DIABLO RD SUITE 203  
DANVILLE CA 94526

MR. RICHARD DUTTON  
ASST MANAGER CSET  
FAA AFS-900 SUITE 203B  
45005 AVIATION DRIVE  
DULLES VA 20166-7537

MR JAY P HOWARD  
MANAGER  
FSDO FAA  
SAN JOSE MUNICIPAL AIRPORT  
1250 AVIATION AVENUE #295  
SAN JOSE CA 95110 1119

MR DAVID C GILLIOM  
MANAGER AWP 200  
FLIGHT STANDARDS DIVISION  
WESTERN-PACIFIC REGION  
HDQRTS PO BOX 92007  
WORLD POSTAL CENTER  
LOS ANGELES CA 90009

MR MONROE BALTON  
REGIONAL COUSEL FAA  
WESTERN-PACIFIC REGION  
HDQRTS AWP-7  
PO BOX 92007  
WORLD POSTAL CENTER  
LOS ANGELES CA 90009

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

MS. JONI MOUNT  
PRODUCT MANAGER  
TRANSPORTATION PRINT PRODUCTS  
OFFICIAL AIRLINE GUIDE  
2000 CLEARWATER DRIVE  
OAK BROOK ILLINOIS 60521

AMERICAN ASSOCIATION OF  
AIRPORT  
EXECUTIVES  
4224 KING STREET  
ALEXANDRIA VIRGINIA 22302

DIRECTOR  
OFFICE OF AIRLINE INFORMATION  
(K-25) U.S. DOT  
400 7TH STREET SW  
WASHINGTON DC 20590

MR. JAMES ZAMMAR  
DIRECTOR OF REVENUE  
ACCOUNTING  
ATA SUITE 1100  
1301 PENNSYLVANIA AVENUE NW  
WASHINGTON DC 20004

MR ALLEN MUTEN  
ASSISTANT TREASURER  
AIRLINES REPORTING CORP  
1530 WILSON BLVD STE 800  
ARLINGTON VA 22209-2448

MR J D MEALOR  
AIRLINE DATA COORDINATOR  
INNOVATA, LLC  
3915 OLD MUNDY MILL RD  
OAKWOOD GA 30566-3410

MR JIM NAWROT  
TRANSPORTATION SPECIALIST  
US POSTAL SERVICE  
475 L'ENFANT PLAZA SW  
ROOM 7826  
WASHINGTON DC 20260