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Order 2001-4-22

Served: April 18, 2001

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

Issued by the Department of Transportation
on the 17th day of April, 2001

Applications of

**BRENDAN AIR, LLC
d/b/a BRENDAN AIRWAYS
d/b/a USA 3000**

**Dockets OST-00-8029 - 6
OST-00-8030 - 4**

for certificates of public convenience and necessity under
49 U.S.C. 41102 to engage in interstate and foreign
scheduled air transportation of persons, property, and
mail

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY**

Summary

By this order, we tentatively conclude that Brendan Air, LLC d/b/a Brendan Airways and d/b/a USA 3000 is a citizen of the United States, and is fit, willing, and able to provide interstate and foreign scheduled air transportation of persons, property, and mail, and should be issued certificates of public convenience and necessity for such operations.

Background

Section 41102 of Title 49 of the United States Code (Transportation) ("the Statute") directs us to determine whether applicants for certificate authority to provide interstate and foreign scheduled air transportation are fit, willing, and able to perform such transportation, and to comply with the Statute and the regulations of the Department. 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) will have access to resources sufficient to commence operations without posing an undue risk to

consumers, and (3) will comply with the Statute and regulations imposed by Federal and States agencies. We must also find that the applicant is a U.S. citizen.

On September 28, 2000, Brendan Air filed applications in Dockets OST-00-8029 and OST-00-8030 for certificates to provide interstate and foreign *charter* air transportation of persons, property, and mail pursuant to section 41102.¹ Brendan Air accompanied its applications with the information required by section 204.3 of our regulations. On December 5, 2000, Brendan Air filed amendments to its initial applications requesting certificates to provide interstate and foreign *scheduled* air transportation of persons, property, and mail.² Initially, Brendan Air proposes to utilize two leased 174-seat Airbus A-320-200 aircraft to offer scheduled passenger service between Philadelphia and Las Vegas and between Philadelphia and Aruba and to provide charter passenger service between various points in the United States and Mexico and the Caribbean.

We have received no answers to the amended applications and no special issues regarding the applicant have come to our attention that would warrant oral hearing procedures. Under these circumstances, we propose to decide the issue of Brendan Air's fitness on the basis of the written record, and we tentatively conclude that Brendan Air is a U.S. citizen and is fit, willing, and able to operate its proposed interstate and foreign scheduled passenger service. However, we will give interested persons an opportunity to show cause why we should not adopt as final these tentative findings and conclusions.

FITNESS

The Company

Brendan Air, headquartered in Newtown Square, Pennsylvania, was organized under Delaware State law as a Limited Liability Corporation on March 20, 2000, to conduct air carrier operations on behalf of Apple Vacations, Inc., its affiliate company.³ Apple Vacations, a Pennsylvania corporation also headquartered in Newtown Square, is an indirect air carrier that commenced operations in 1969 and is one of the largest tour operators in the United States offering the traveling public a variety of both scheduled and charter tour programs to Mexico, Hawaii, Aruba, Las Vegas, the Bahamas, Bermuda, the Dominican Republic, Costa Rica, as well as a number of smaller Caribbean destinations. Apple Vacations has used a variety of direct air carriers to

¹ Brendan Air requested that certain information contained in its September 28, 2000, filing be withheld from public disclosure. By letter dated November 30, 2000, the Department granted the applicant's request for confidentiality.

² Information supplementing Brendan Air's amended applications was filed on January 18, 2001.

³ The Apple companies are also comprised of Apple West, Inc., and Atkinson & Mullen Travel, Inc., wholesale tour operators serving the midwestern United States and eastern United States, respectively.

conduct its flights in the past; however, because of that company's growth and the inability of direct air carriers to completely meet its airlift requirements, Brendan Air was formed.

Brendan Air is owned by Brendan Aviation Holdings, Inc., a newly formed Delaware corporation, which in turn is wholly owned by John and Joan Mullen and their family.⁴ Mr. and Mrs. Mullen are also the sole owners of Apple Vacations.⁵ Mr. Mullen serves as President and Chief Executive Officer of Apple Vacations and Apple West and is Chairman of the Board of Brendan Aviation Holdings.⁶

Brendan Air's principal bases of operation will be Philadelphia, Chicago, and Newark. Once certificated, Brendan Air intends to use two leased 174-seat Airbus A-320-200 aircraft to offer one scheduled round-trip flight per week between Philadelphia and Las Vegas and between Philadelphia and Aruba and to provide charter passenger service between various points in the United States and points in Mexico and the Caribbean. Brendan Air plans to expand the frequency of its scheduled operations when it takes delivery of three more Airbus A-320-200 aircraft between April and November 2002.

Managerial Competence

Mr. James Kenney is Brendan Air's President. Prior to assuming that position in May 2000, Mr. Kenney was Vice President of Maintenance of Miami Air International for one year and before then, was President of Laker Airways for two years (1996-1998). Mr. Kenney was employed by the Federal Aviation Administration for 12 years between 1984 and 1996 in positions that included Flight Standards District Office Manager, Staff Manager, and Aviation Safety Inspector. Prior to that, his aviation experience included serving as a scheduler with Henson Airlines, and as a pilot with FIT Aviation for three years (1981-1984). Mr. Kenney holds an Airline Transport Pilot license.

Mr. Robert Thaler is Brendan Air's Chief Financial Officer, a position he assumed in May 2000. Prior to that, Mr. Thaler served for one year as Director of Finance with Apple Vacations and seventeen years as a Senior Manager with Cogan Sklar, LLP, an accounting firm.

⁴ Mr. and Mrs. Mullen each own 20 percent of the voting stock of Brendan Aviation Holdings and their four children, Jeffrey, Timothy, Matthew, and Janine, each own 15 percent.

⁵ Mr. and Mrs. Mullen own 100 percent of National Aviation Holdings, Inc., a Delaware company, which in turn owns 15 percent of the stock of Canada 3000 Airlines Ltd., a Canadian Part 129 scheduled and charter air carrier, where Mr. Mullen is a Director on the Board. Also through National Aviation Holdings, Mr. and Mrs. Mullen own less than 1 percent of the voting stock of Transmeridian Airlines, a U.S. certificated air carrier.

⁶ In addition to John Mullen, Brendan Aviation Holdings' Directors are Kenneth Larson, Chief Financial Officer of Apple Vacations, Robert Thaler, the applicant's Chief Financial Officer, Jeffrey Mullen, and Timothy Mullen.

Mr. Frederick Miller, an Airframe and Powerplant Mechanic, became Brendan Air's Director of Maintenance in August 2000. Between 1989 and 2000, Mr. Miller's aviation experience includes serving as Director of Maintenance of Ryan International Airlines (1998-2000), Project Manager and Technical Consultant with ORIX Aviation Systems (1993-1998) and with Guinness Peat Aviation (1989-1990), fleet manager and training instructor with America West Airlines (1990-1993), and a factory representative, maintenance controller, and line service mechanic with Braniff (1984-1989).

Mr. Andrew Clay, an Airline Transport Pilot, has been Brendan Air's Director of Operations since August 2000. Mr. Clay has over 31 years of aviation experience. Four of those years were spent serving as Director of Operations with companies that included Colgan Air (1998-2000) and Prestige Airways (1996-1998). From 1973 through 1996, Mr. Clay served in positions that included Chief Pilot, check airman, captain, first officer, and flight department manager with such companies as Pacific International Airlines, Capital Air Express, Key Air, Air Atlanta, Cam Air International, Dolphin Airways, Walston Aviation Sales, and Golden Isles Aviation. From 1969 to 1973, Mr. Clay owned and operated Troupaire, Inc., a fixed base operator in Georgia.

Mr. John Bragger, Jr., an Airframe and Powerplant Mechanic, became Brendan Air's Director of Safety in October 2000. Mr. Bragger has served with the United States Air Force Reserve since 1990 as Chief of Standards and Evaluations, a position he continues to hold. For a total of four years, he served as a line captain with TransMeridian Airlines, Excalibur Airways, and Leisure Air. In addition, he has served as a ground training instructor for one year with Crew Source International and Pan Am Flight Academy. Mr. Bragger's other aviation positions included two years as a first officer with Gemini Air Cargo and Trans World Airlines.

Mr. Warner Lyons, an Airline Transport Pilot with 11,700 hours of recorded flight time, came to Brendan Air to serve as Chief Pilot in November 2000 with nearly thirty years of aviation flight experience. That experience included serving for a total of eight years as Captain, check airman and/or first officer with TransMeridian Airlines (1997-2000), Trans Asia Airlines (1995-1997), Leisure Airlines (1992-1995), and Mark Air (1992). Mr. Lyons served as a command pilot for the United States Air Force for twenty years between 1971 and 1991.

Mr. Charles Neil, an Airframe and Powerplant Mechanic, is Brendan Air's Chief Inspector, a position he assumed in January 2001. Prior that, Mr. Neil was an Assistant Chief Inspector with Summit Aviation (1995-2000), Vice President of Maintenance for Trans World Express (1991-1995), Director of Quality Control and Chief Inspector with Pan Am Express (1986-1991), and a maintenance inspector for Ransom Airlines (1974-1986).

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Brendan Air has demonstrated that it has the management skills and technical ability to conduct its proposed scheduled and charter service.⁷

Financial Plan and Operating Proposal

Initially, Brendan Air will utilize two leased 174-seat Airbus A-320-200 aircraft to offer one scheduled round-trip flight per week between Philadelphia and Las Vegas and one scheduled round-trip flight per week between Philadelphia and Aruba in addition to providing charter passenger service between the U.S. and Mexico and the Caribbean. Brendan Air plans to expand the frequency of its scheduled operations after it takes delivery of three more Airbus A-320-200 aircraft between April and November 2002.

Brendan Air has provided a list of its pre-operating costs and a detailed quarterly estimate of its expenses for its first year of proposed operations. Brendan Air expects that, during its pre-operating period, its expenses will total \$11.2 million and that it will incur nearly \$48.8 million in operating expenses for its first year of operations. We have examined these estimates and find them to be reasonable. Based on our analysis of Brendan Air's forecasts, it appears that the applicant will need access to resources of nearly \$23.4 million to meet the Department's financial fitness criteria.⁸

Brendan Air has indicated that its funding will be derived from Mr. John Mullen, the applicant's founder and ultimate owner. It has furnished a letter from a private investment firm, that verifies that Mr. Mullen has a combination of liquid investments and an unused line-of-credit that exceeds the amount of resources that Brendan Air will need to cover the necessary operating expenses during its first year of proposed service. We, therefore, tentatively conclude that Brendan Air has the resources necessary to provide its proposed certificated operations without posing an undue risk to consumers or their funds.

⁷ 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.

⁸ 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 certificated 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.

Compliance Disposition

The applicant states that there have been no formal complaints filed or orders issued finding it, its owners, officers, key personnel, or affiliated companies 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. Brendan Air further states that there are no actions filed or outstanding judgments against any of these parties.

Our search of the Department's records found no compliance problems with Brendan Air, its owners, officers, key personnel, or affiliated companies. Further, the FAA has stated that Brendan Air has applied for certification under Part 121 of the Federal Aviation Regulations and that the certification process is progressing satisfactorily. Moreover, the FAA stated that it knows of no reason why we should act unfavorably on Brendan Air's application.

Based on these considerations, we tentatively conclude that Brendan Air will have the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

CITIZENSHIP

Section 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). 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.

Brendan Air's sole owner is Brendan Aviation Holdings, Inc., a Delaware corporation. Brendan Aviation Holdings is wholly owned by Mr. and Mrs. John Mullen and their family. The applicant has provided an affidavit attesting that it is a U.S. citizen and has affirmed that its owners, officers, key personnel, and affiliated companies are all U.S. citizens. Furthermore, there is nothing in the record that would lead us to conclude that control of Brendan Air is not with citizens of the United States.

In view of the foregoing, we tentatively conclude that Brendan Air is a U.S. citizen and is fit, willing, and able to provide the interstate and foreign scheduled passenger service it proposes.

PUBLIC CONVENIENCE AND NECESSITY

Under section 41102(b)(2) of the Statute, before the Department can issue a certificate authorizing foreign air transportation, it must find that the transportation is consistent with the public convenience and necessity. We tentatively find that Brendan Air's proposed scheduled operations in the Philadelphia-Aruba market meet this standard. The services proposed are consistent with the open-skies aviation agreement between the United States and Aruba. Moreover, the services proposed will expand the range of price and service options available to travelers and shippers.

OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect such persons to direct their objections, if any, to the applications and points at issue and to support such objections with detailed economic analyses.⁹ We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue orders that will make final our tentative findings and conclusions with respect to Brendan Air's certification and fitness.¹⁰

CERTIFICATE CONDITIONS AND LIMITATIONS

If Brendan Air is found fit and issued the certificates it seeks, its authority will not become effective until the company has fulfilled all of the requirements for effectiveness as set forth in the terms and conditions attached to its certificates. Among other things, this includes our receipt of evidence that Brendan Air has been certified by the FAA to engage in the subject operations and that it has obtained passenger liability insurance coverage meeting the requirements of Part 205 of our rules. We must also receive evidence that Brendan Air has filed, in Docket 96-1960, a copy of its Aviation Disaster Family Assistance Plan as required under section 41113 of the Statute and, in Docket 98-3305, a statement summarizing how it will collect passenger manifest information and submit it to the Department of State in the event of an aviation disaster as required under Part 243 of our rules.

⁹ If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedures should be specified (*see* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

¹⁰ Pursuant to 49 U.S.C. 41307, issuance of foreign authority to the applicant is subject to Presidential review.

Furthermore, we remind Brendan Air of the requirements of section 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that certificated air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness.

Our tentative findings stated above are based on the operating plans described in Brendan Air's applications that propose the use of up to five 174-seat Airbus A-320-200 aircraft during its first year of operations. These findings of fitness might no longer apply if the company were to substantially change the scope of its operations through the introduction of additional aircraft. Therefore, once the applicant's certificates become effective, should Brendan Air propose to acquire any aircraft beyond the five aircraft discussed in its applications, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to implementing service with any additional aircraft. Furthermore, should Brendan Air propose any other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.¹¹ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).¹²

Moreover, to aid the Department in monitoring the fitness of new carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report, within 45 days following the end of the first year of actual flight operations, to the Air Carrier Fitness Division. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements, and a listing of current

¹¹ Brendan Air may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations or management, and to determine what additional information, if any, will be required under section 204.5. In addition, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file this 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 certificate authority.

¹² We also remind Brendan Air about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the certificate authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume certificated operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue an order making final our tentative findings and conclusions stated above and award certificates to Brendan Air, LLC d/b/a Brendan Airways and d/b/a USA 3000 authorizing it to engage in interstate and foreign scheduled air transportation of persons, property, and mail, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of orders making final any of the proposed findings, conclusions, or the certificate awards set forth here to file such objections with Department of Transportation Dockets, 400 7th Street, S.W., Washington, D.C. 20590, in Dockets OST-00-8029 and OST-00-8030, and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter orders making final our tentative findings and conclusions.¹³
5. We will serve a copy of this order on the persons listed in Attachment A, and publish a notice of this order in the Federal Register.

By:

SUSAN MCDERMOTT
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>*

¹³ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



Specimen
Terms, Conditions, and Limitations

BRENDAN AIR, LLC
d/b/a BRENDAN AIRWAYS
d/b/a USA 3000

is authorized to engage in interstate air transportation of persons, 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 authority to operate under this certificate 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.*
 - (e) A copy of the holder's Aviation Disaster Family Assistance Plan as required by 49 U.S.C. 41113 and a statement summarizing how it will collect passenger manifest information and submit it to the Department of State in the event of an aviation disaster as required under 14 CFR Part 243.*
- (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 the operations proposed under this certificate, 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 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.

(4) The holder's authority is effective only to the extent that such operations are also authorized by the FAA, and comply with all FAA requirements concerning security.

(5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(6) 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.

(7) In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:

(a) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

(b) 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.

(8) 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.

(9) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held 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.



Specimen
Terms, Conditions, and Limitations

BRENDAN AIR, LLC
d/b/a BRENDAN AIRWAYS
d/b/a USA 3000

is authorized to engage in foreign air transportation of persons, property, and mail:

Between a point or points in the United States and Aruba.

This authority is subject to the following provisions:

- (1) *The authority to operate under this certificate 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.*
 - (e) *A copy of the holder's Aviation Disaster Family Assistance Plan as required by 49 U.S.C. 41113 and a statement summarizing how it will collect passenger manifest information and submit it to the Department of State in the event of an aviation disaster as required under 14 CFR Part 243.*
- (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 the operations proposed under this certificate, and any advertisement 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 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.

(4) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights and has notified the foreign country(ies) involved that any such selected carrier(s) has the required authority. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.

(5) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.

(6) The holder's authority is effective only to the extent that such operations are also authorized by the FAA, and comply with all FAA requirements concerning security.

(7) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(8) 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.

(9) 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.

(10) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held 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.

Attachment A

**BRENDAN AIR, LLC
d/b/a BRENDAN AIRWAYS
d/b/a USA 3000**

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