

132287

Order 2001-2-11

Served: February 13, 2001



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

Issued by the Department of Transportation
on the 15th day of December, 2000

Application of

SOUTHEAST AIRLINES, INC.

for a certificate of public convenience and necessity under
49 U.S.C. 41102 to engage in foreign charter air
transportation of persons, property and mail

Docket OST-2000-7956- 4

ORDER ISSUING CERTIFICATE

Summary

By this order, we (1) conclude that Southeast Airlines, Inc., is a citizen of the United States, and is fit, willing, and able to provide foreign charter air transportation of persons, property, and mail, and (2) issue it a certificate of public convenience and necessity authorizing such operations.

Background

Section 41102 of Title 49 of the United States Code (Transportation) ("the Statute") directs us to determine that applicants for certificate authority to provide foreign charter air transportation of persons, property and mail are "fit, willing, and able" to perform such transportation and to ensure that all operations relating to this authority conform to the provisions of the Statute and the regulations and requirements 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 State agencies. We must also find that the applicant is a U.S. citizen.

On September 20, 2000, Southeast Airlines, Inc. (Southeast) filed an application in Docket OST-2000-7956 requesting authority under 49 U.S.C. 41102 to provide foreign charter air transportation of persons, property, and mail. Southeast accompanied its application with information required by section 204.3 of our regulations for an examination of its fitness.¹

Southeast is an operating charter air carrier. The carrier was originally found fit and issued an interstate passenger charter certificate in 1993 (*see* Order 93-9-15, issued September 14, 1993). It filed for bankruptcy protection and ceased operations in June 1997. In June 1998, the carrier completed its bankruptcy reorganization and filed an application requesting a redetermination of its fitness to resume operations.² By Order 99-2-13, issued February 12, 1999, the Department found Southeast fit to do so. Since then, Southeast has been providing charter services primarily for tour operators and subservice flights for other air carriers; it has recently begun its own direct-sales public charter program.³

Southeast states that it filed its application for foreign charter authority and to operate additional aircraft⁴ so that it could take advantage of other air transportation opportunities that are available to it.⁵ The carrier anticipates that its foreign operations will include service to points in Mexico and the Caribbean.

No objections to Southeast's application were filed.

As discussed below, our review of the information in Southeast's application indicates that the carrier is fit to hold the foreign charter authority it seeks. We also note that the foreign flights contemplated by Southeast are similar in scope to those it is currently conducting domestically. Under these circumstances, and because of the findings made below, we have decided that neither an oral evidentiary hearing nor a show-cause proceeding is necessary for us to make a decision in this case. Therefore, in accordance with section 302.210(a)(2) of our regulations (14 CFR 302.210(a)(2)), we will proceed directly to final approval of Southeast's certificate for foreign charter passenger authority.⁶

¹ Since then, the applicant has supplemented its application with additional information.

² Section 204.7 of our rules requires that a certificated air carrier that ceases all air transportation operations must have its fitness redetermined prior to resuming such operations.

³ The points served under this public charter program include St. Petersburg and Sarasota, Florida, Atlanta, Georgia, and Charlotte, North Carolina.

⁴ In authorizing it to resume operations in February 1999, we required Southeast to provide us with advance notice and updated fitness information at least 45 days prior to any planned expansion of its operations beyond the one DC-9 aircraft proposed at that time. In December 1999, the carrier requested, and we approved, the addition of a second DC-9 to its fleet. On September 8, 2000, the carrier advised us that it wanted to expand its fleet by adding another two DC-9 aircraft, a request reiterated in its application in this docket. Based on the information contained in the instant application, and in consultation with the FAA, on November 7, we authorized the carrier to add these two aircraft to its fleet, bringing to four the total number of aircraft Southeast is currently authorized to operate.

⁵ Southeast has recently begun public charter flights domestically for Flightserve.com and its application states that its arrangements with this company contemplate the addition of international flights in the future.

⁶ The issuance of a foreign certificate is subject to Presidential review under 49 U.S.C. 41307.

FITNESS

The carrier continues to be wholly owned by its President, P. Thomas Kolfenbach, a U.S. citizen. According to the application, with the exception of the company's Chief Pilot, who assumed his responsibilities in July 2000, all of the carrier's current key personnel have been in their positions for at least the past year.⁷

In support of its ability to expand its operations, Southeast provided balance sheets and income statements for the calendar year ending December 31, 1999, and for the six-months ending June 30, 2000, as well as a balance sheet at August 31, 2000. These documents indicate that the carrier's operations have been profitable overall since it resumed services in February 1999. In this regard, for the year ending December 31, 1999, the company had operating and net profits of \$10,516 and \$21,001, respectively, on \$5.3 million in revenues; for the six months ending June 30, 2000, the carrier had operating and net profits, respectively, of \$303,038 and \$271,431. Its August 31, 2000, balance sheet shows that, at that date, Southeast had approximately \$2.1 million in cash, \$2.7 million in available working capital, a current assets to current liabilities ratio of 3.19 to 1, negative retained earnings of \$2.0 million,⁸ and net equity of \$6.8 million. To support its expanded services, the carrier has recently secured loans totaling approximately \$7.6 million to purchase two additional planes.

The FAA advises that a recent review of Southeast revealed no major issues involving the carrier's operations,⁹ and that Southeast already holds the authority needed from that agency to conduct foreign passenger charter services. We have no other information at this time that leads us to conclude that the carrier is not fit.

In light of the above, we conclude that Southeast is fit to hold the foreign passenger charter certificate it seeks.

PUBLIC CONVENIENCE AND NECESSITY

We find that the foreign charter air transportation proposed by Southeast is consistent with the public convenience and necessity. By Order 78-7-106, which instituted the *Former Large*

⁷ Southeast advises that, in addition to Mr. Kolfenbach, the following individuals hold key management positions with Southeast: Thomas Balkenhol (Chief Operating Officer/General Manager), Scott Bacon (Vice President-Sales and Marketing), Robert Dunton (Director of Operations), Lee Bray (Chief Pilot), Ronald Hamilton (Vice President-Maintenance), Robert McDougall (Director of Quality Control), Bruce Dries (Director of Safety), Sean Deaton (Vice President-Systems Operations), Charles Hellier (Chief Financial Officer) and Mary Jo Hoday (Director, In-Flight). With the exception of Ms. Hoday, who is Canadian, all of these individuals are U.S. citizens. The FAA has approved Messrs. Dunton, Bray, Hamilton, McDougall, and Dries to hold their FAA-required positions.

⁸ The carrier's accountants advise that, while Southeast's flight operations have been profitable, its negative retained earnings are due to expenses incurred during 1998 when it had ceased flight operations.

⁹ The carrier advises that it currently has two outstanding pending FAA investigations. One involves the training of personnel performing maintenance on one of the carrier's aircraft. The other concerns alleged violations of FAA rules relating to drug testing of company employees.

Irregular Air Service Investigation, the Civil Aeronautics Board found that there was a continuing demand and need for additional charter air carriers. These findings remain valid and apply to the authority sought by Southeast.

CERTIFICATE CONDITIONS AND LIMITATIONS

The certificate issued to Southeast shall become effective immediately. Furthermore, we remind Southeast of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit, 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 their fitness.

Moreover, as noted earlier, Southeast is currently limited to operations with no more than four aircraft. We will continue our requirement that Southeast notify the Department in writing at least 45 days in advance of any planned expansion in its fleet and demonstrate its fitness for such operations prior to implementing service with any additional aircraft. Furthermore, should Southeast propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.¹⁰ The compliance of the carrier with this requirement is essential if we are to carry out our responsibilities under section 41110(e).¹¹

ACCORDINGLY,

1. We find that Southeast Airlines, Inc., is fit, willing, and able to engage in foreign charter air transportation of persons, property, and mail.¹²
2. We issue a certificate of public convenience and necessity to Southeast Airlines, Inc., to engage in foreign charter air transportation in the form and subject to the Terms, Conditions, and Limitations attached.
3. Should Southeast Airlines, Inc., propose to expand its fleet to include more than four aircraft, we direct it to notify the Department in writing at least 45 days prior to the proposed expansion and demonstrate its fitness to conduct such operations.

¹⁰ 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. Southeast 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 the carrier 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 certificate authority.

¹¹ We also remind Southeast of the requirements of section 204.7 of our rules. This section provides, among other things, that (1) if the company ceases all operations for which it was found fit, it may not resume such operations unless its fitness has been redetermined; and (2) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

¹² This order was submitted for section 41307 review on **December 15, 2000.**

On February 12, 2001, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

4. 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>*



Certificate of Public Convenience and Necessity
for
Foreign Charter Air Transportation

This Certifies That

SOUTHEAST AIRLINES, INC.

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 foreign charter air transportation of persons, property, and mail.

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

By Direction of the Secretary

Issued by Order 2001-2-11

On December 15, 2000

Effective on February 13, 2001

Francisco J. Sanchez

Assistant Secretary for

Aviation and International Affairs



Terms, Conditions, and Limitations

SOUTHEAST AIRLINES, INC.

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

Between any place in the United States and any place outside thereof.

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 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 orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.*
- (3) 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.*
- (4) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (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) *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.*
- (8) *In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under all certificates issued to it 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 SOUTHEAST AIRLINES, INC.

Mr. P. Thomas Kolfenbach, President
Southeast Airlines, Inc.
12552 Belcher Road, Ste. 130
Largo, Florida 34643

Mr. Terence G. Haglund
Aviation Law Center
295 McLaws Circle, Ste. 1
Williamsburg, Va. 23185

Mr. Peter J. Lynch, Asst. Chief Counsel
For Enforcement, AGC-300
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, D.C. 20591

Mr. Richard Dutton
Asst. Manager, CSET
Federal Aviation Administration
AFS-900, Ste. 203B
45005 Aviation Drive
Dulles, Virginia 20166-7537

Mr. Kenneth Perroz, POI
Federal Aviation Administration
Flight Standards District Office
5601 Mariner Street
Balboni Bldg., Ste. 310
Tampa, Florida 33609

Mr. W. Michael Sacrey, Manager
Flight Standards Division, ASO-200
Federal Aviation Administration
Southern Region Headquarters
P.O. Box 20636
Atlanta, Georgia 30320

Mr. Eddie L. Thomas
Regional Counsel, ASO-7
Federal Aviation Administration
Southern Region Headquarters
P.O. Box 20636
Atlanta, Georgia 30320

Mr. Don Bright, Acting Director
Office of Airline Information, K-25
Department of Transportation
400 - 7th St. S.W.
Washington, D.C. 20590

Mr. J. D. Mealar
Airline Data Coordinator
Innovata, LLC
3915 Old Mundy Mill Road
Oakwood, Ga. 30566

Ms. Joni Mount, Product Manager
Transportation Print Products
Office Airline Guide
2000 Clearwater Drive
Oak Brook, Illinois 60523

Mr. Allen Muten, Asst. Treasurer
Airlines Reporting Corp.
1530 Wilson Blvd., Ste. 800
Arlington, Virginia 22209-2448

American Assn. of Airport Executives
4224 King Street
Alexandria, Virginia 22302

Mr. James Zammar, Dir. of Revenue Acctg.
Air Transport Association
1301 Pennsylvania Ave., N.W., Ste. 1100
Washington, D.C. 20004