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

Served: February 20, 2001

Issued by the Department of Transportation
on the 20th day of February, 2001

Application of

AIR EXCURSIONS, LLC

DOCKET OST-99-5948 - 12

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

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

Summary

By this order, we tentatively find that Air Excursions, LLC is a citizen of the United States and is fit, willing, and able to provide interstate scheduled air transportation of persons, property and mail using small aircraft and should be issued a certificate 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 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 State agencies. We must also find that the applicant is a U.S. citizen.

On July 12, 1999, Air Excursions, located in Gustavus, Alaska, filed an application in Docket OST-99-5948 for a certificate to provide interstate scheduled air transportation of persons, property, and mail pursuant to section 41102 of the Statute. Air Excursions

accompanied its application with the fitness information required by section 204.3 of our regulations.¹ In addition, the applicant has submitted its family assistance plan required under 49 U.S.C. 41113.²

No answers were filed to the application and no other issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that Air Excursions is a U.S. citizen and is fit, willing, and able to operate its proposed interstate scheduled passenger service. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

The Company

Air Excursions was organized by Mr. Steven Wilson as a sole proprietorship under the laws of the State of Alaska and began operations as an air taxi in January 1991. In November 1999, Mr. Wilson changed the organizational structure of the company to a limited liability company, and in February 2000, all of the stock in the company was transferred to Mr. Michael Loverink. Air Excursions currently operates on-demand service between Gustavus and Juneau. If its application is approved, the carrier plans to convert these on-demand passenger flights to scheduled service and to carry mail. Air Excursions will provide the proposed service using a five-passenger PA-32 aircraft which is owned by Mr. Wilson.

Managerial Competence

Mr. Michael Loverink, Air Excursions' sole owner, also serves as its Chief Pilot and Director of Maintenance. He began his aviation career at LeTourneau University in Longview, Texas, in 1985 where he graduated with a Bachelor of Science degree in Aviation Technology. He was subsequently employed by LeTourneau as a flight instructor from January 1990 until June 1991. In October 1991, he was employed as a line mechanic and pilot at Haines Airways where he advanced to Director of Maintenance and also served as Chief Pilot. In April 1998, he left Haines to become Director of Maintenance for Air Excursions. Mr. Loverink holds an FAA-issued Airline Transport Pilot Certificate and Airframe and Powerplant Mechanic License with Inspection Authorization, and has logged over 6,600 flight hours.

¹ Air Excursions filed information supplementing its application on November 16 and December 10, 1999, April 18, September 11, and December 22, 2000, and January 17 and 29, 2001.

² Section 41113 prohibits the Department from approving an application unless an applicant submits to the Department and the National Transportation Safety Board a plan to address the needs of victims and families of victims of aircraft accidents.

Mr. Steven Wilson, founder of Air Excursions, serves as its Director of Operations and as a line pilot. He began his aviation career in 1983 as a ramp agent for Alaska Airlines. In March 1986, he moved to Renton, Washington, to pursue commercial pilot training. After receiving his instrument rating and obtaining his FAA Commercial Pilot Certificate, he returned to Gustavus in November 1986 where he was hired as a line pilot for Skagway Air Service. He subsequently served as a pilot with Wings of Alaska, Glacier Bay Airways and Taku Glacier Lodge. Mr. Wilson holds an FAA-issued Airline Transport Pilot Certificate and has logged over 9,000 flight hours.

Ms. Bonnie Niemi, who serves as Air Excursions' business manager, began employment with the carrier in May 1997. She is responsible for performing a number of administrative functions, including flight scheduling and dispatching, bookkeeping and financial management and documenting and handling freight. Prior to joining Air Excursions, Ms. Niemi had over twenty years of experience primarily performing various administrative functions in a number of different companies and industries.

In addition to the above individuals, Air Excursions has eight other employees, including three pilots, an aircraft maintenance technician, two ground handlers, and two station and counter managers.

In view of the experience and background of the applicant's key personnel, and the fact that they are currently conducting operations similar to those proposed, we tentatively conclude that Air Excursions has demonstrated that it has the management skills and technical ability to conduct its proposed limited scheduled service operations.³

Financial Plan and Operating Proposal

If granted the certificate authority it seeks, Air Excursions intends to provide limited scheduled passenger service between Gustavus and Juneau, Alaska. In addition, the carrier intends to carry mail. The company expects that its proposed scheduled operations will total approximately 312 additional flight hours per year.⁴

The applicant furnished data for its first year of proposed scheduled flight operations including estimated revenues and operating costs. Air Excursions also provided a

³ 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. The FAA has advised us that Air Excursions' management personnel are qualified and acceptable for their positions.

⁴ The distance between Gustavus and Juneau is 54 nautical miles. The carrier proposes to provide one round trip a day, six days a week. The carrier will use a Piper PA-32 which is currently being leased from Mr. Wilson. Mr. Wilson owns additional Piper PA-32 aircraft which could be utilized as back-up aircraft.

breakdown of revenues by passenger, mail and freight service. Expenses were projected on a per-hour basis based on historical data in the same market in which Air Excursions now provides on-demand operations. The applicant projects first-year total operating revenues of \$73,008 and total operating expenses of \$58,968 based on a total of 312 hours of scheduled operations a year, resulting in an estimated profit of approximately \$14,000. Air Excursions indicated that it already has hangar space and other facilities, including administrative support. Since it is currently operating and will require no additional aircraft or personnel, pre-operating costs will be minimal.

We have examined the applicant's estimated expenses and find them to be reasonable. Based on our analysis of its forecasts, it appears that Air Excursions will need access to resources of at least \$24,000 to meet the Department's financial fitness criteria for its proposed limited scheduled operations.⁵

Funding for Air Excursions' operations has been and will continue to be provided by its current operations. Air Excursions has been consistently profitable. In both calendar years 1998 and 1999, the carrier reported a pre-tax profit of approximately \$150,000. For the period January 1, through November 30, 2000, it reported a profit of approximately \$70,000 on revenues of \$700,000. The First National Bank of Anchorage has provided verification that as of December 1, 2000, Air Excursions had a balance in excess of \$41,000 in its bank account. The carrier submitted a balance sheet as of November 30, 2000. The carrier had a current assets to current liabilities ratio of 16:1 with working capital of \$55,822 and total equity of \$19,672.

The carrier's aircraft are owned by Mr. Wilson. Its terminal building and ground handling equipment are owned by Mr. Loverink. It has no accounts payable and long term debt of \$44,800.

Based on the above, we tentatively conclude that Air Excursions has, through internal funds and the resources of its owner and founder, access to sufficient financial resources to enable it to commence its proposed limited scheduled passenger operations without posing an undue risk to consumers or their funds. However, should Air Excursions expand its operations, such as through the acquisition of larger aircraft that must be operated under Part 121 of the Federal Aviation Regulations (FARs), this financial fitness determination might no longer be valid. Therefore, as discussed in the **Certificate Conditions and**

⁵ This amount is comprised of approximately one-fourth of the applicant's estimated total first-year operating costs of \$59,000 plus pre-operating costs of \$9,500. In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of normal certificated operations. Because projected expenses during one or more of the first several months of service frequently do not include all costs of operations 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.

Limitations section below, we have decided to limit Air Excursions' authority to the use of five aircraft with 9 or fewer seats.

Compliance Disposition

Air Excursions stated that there are no actions or outstanding judgments against it, its owners, or its key personnel, nor have there been any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations brought against any of these parties in the past ten years. Air Excursions further stated that there are no pending investigations, enforcement actions, or formal complaints filed by the Department against it, its key personnel, or persons having a substantial interest in it with respect to compliance with the Statute or the Department's regulations. We examined the Department's records and have found that during the past two years, Air Excursions has been the subject of three FAA enforcement cases, each of which were closed with a letter of correction, no action taken or a warning letter.

Within the last nine years, Air Excursions has been involved in two accidents, neither of which resulted in fatalities or injuries. The first accident occurred on May 25, 1992, when an aircraft collided with trees resulting in substantial damage to the aircraft. Contributing to the accident was poor flight planning and weather. Mr. Wilson was the pilot and, as a result of the accident, was given a two-month suspension of his pilot's license. The second accident occurred on June 24, 1995, when, on roll-out, the pilot lost directional control due to improperly installed non-standard brakes. The aircraft sustained substantial damage. The pilot is no longer employed by Air Excursions.

Further, the FAA has advised us that the company has applied for certification as a scheduled air carrier under Part 135 of the Federal Aviation Regulations and that the certification process is proceeding normally. The FAA also advised us that all key personnel have been found qualified to hold their respective positions and the agency has no objection to our finding the applicant fit for its projected operations. Our review of the carrier's record as an air taxi operating in the Alaskan environment, indicates a compliance record comparable to other similar operators.

In light of all these considerations, we tentatively conclude that Air Excursions will have 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

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.

Air Excursions is organized as a limited liability company under the laws of Alaska and is owned by a U.S. citizen. All of the company's key personnel are U.S. citizens, and Air Excursions has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute. Finally, our review of the applicant's citizenship has uncovered no reason to suggest that control of Air Excursions rests with non-U.S. citizens.

Based on the above, we tentatively conclude that Air Excursions is a citizen of the United States and is fit, willing, and able to conduct the limited interstate scheduled passenger operations proposed in its application.

OBJECTIONS

We will give interested persons 14 calendar 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 calendar days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses.⁶ We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Air Excursions' fitness, and will issue a certificate that will contain an exact copy of the attached Terms, Conditions, and Limitations.

CERTIFICATE CONDITIONS AND LIMITATIONS

If Air Excursions is found fit and issued the certificate it seeks, its authority will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its certificate. Among other things, this includes our receipt of evidence that Air Excursions has been certified by the FAA to engage in scheduled passenger operations, a fully executed OST Form 6410 evidencing liability insurance coverage that meets the requirements of 14 CFR 205.5(b) for all of its aircraft, and a statement of any changes it may have undergone since its fitness was examined.

⁶ 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 procedure should be specified (*See* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

Furthermore, we remind Air Excursions of the requirements of 49 U.S.C. 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.

Moreover, given the limited scope of Air Excursions' proposed operations, we will impose certain limitations on its authorization to provide scheduled air service as a certificated air carrier. The Department has adopted a policy of imposing conditions in fitness orders to facilitate appropriate monitoring of individual air carriers' growth. Along these lines, we note that our finding of fitness for Air Excursions is based on the operating plans described in its application, namely, the use of aircraft that can be operated under Part 135 of the FARs. Furthermore, there are other limitations and conditions set forth in the carrier's FAA Operations Specifications; specifically Air Excursions' operations are limited to, among other things, no more than five aircraft. Were the applicant to propose to expand its operations to include more than five aircraft or aircraft with more than 9 seats, our fitness findings, particularly those regarding the adequacy of its management team and financial resources, might no longer apply.⁷ Therefore, we propose to limit any authority issued to Air Excursions to operations with five aircraft with no more than 9 passenger seats. Should Air Excursions subsequently desire to operate additional or larger aircraft, it must first be determined to be fit for such operations. Furthermore, should Air Excursions propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.⁸ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).⁹

⁷ In this regard, we note that the operation of scheduled passenger operations with aircraft having a seating capacity of 10 or more would require the carrier to transition to Part 121 of the FARs, a step which may require the applicant to obtain additional management personnel and/or incur additional financial outlays.

⁸ Air Excursions may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership or management, and to determine what additional information, if any, will be required under section 204.5. Moreover, 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.

⁹ We also remind Air Excursions 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

To aid the Department in its responsibility to monitor the fitness of new carriers, we have also 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 certificated 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 its operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,¹⁰ and a listing of current 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 the tentative findings and conclusions stated above and award a certificate to Air Excursions, LLC authorizing it to engage in interstate 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 an order making final any of the proposed findings, conclusions, or the certificate award set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-99-5948, and serve them upon all persons listed in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar 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.¹¹
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.

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.

¹⁰ These financial statements should include a balance sheet as of the end of the company's first full year of actual certificated flight operations and a twelve-month income statement ending that same date.

¹¹ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

SUSAN E. 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>*



Specimen
Terms, Conditions, and Limitations

AIR EXCURSIONS, LLC

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.*
- (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 may not operate more than five aircraft designed to have a maximum passenger capacity of more than nine seats. In the event that the holder wishes to institute operations with more than five aircraft or with aircraft having a larger capacity, it must first be determined fit for such operations.*

(4) *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.*

(5) *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.*

(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 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.*

(8) *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.*

(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.*

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