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Order 2002-2-17

Served: February 26, 2002



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

Issued by the Department of Transportation
on the 26th day of February, 2002

Application of

AIR-SERV., INC.

for an exemption pursuant to 49 U.S.C. 40109 (c)

Docket OST-02-11470 - 2

ORDER REISSUING CERTIFICATES

Summary

By this order, we are reissuing to Air-Serv., Inc. d/b/a AirServ, d/b/a Indigo, L.L.C., and d/b/a NewWorldAir Holdings, Inc. (AirServ) its interstate and foreign passenger charter certificates to replace the condition that limits its operations to aircraft *designed* to have a maximum passenger capacity of 30 seats with a condition that permits AirServ to operate any aircraft pursuant to Part 135 of the Federal Aviation Regulations, provided that aircraft remains a "small" aircraft pursuant to 14 CFR Part 298. We are also dismissing as moot AirServ's application for an exemption.

Background

AirServ, a small air carrier based in Chicago, holds interstate and foreign passenger charter certificates made effective by Orders 2000-8-10 and 2000-10-25, respectively. AirServ's certificates limit the carrier to operations with aircraft *designed* to have a maximum passenger seating capacity of no more than 30 seats. It currently operates a fleet of four eight-seat Dassault Falcon 20 aircraft under a Part 135 certificate issued by the Federal Aviation Administration (FAA). Since receiving certificate authority, the majority of AirServ's flights have been operated in public charter service on behalf of its sister company, Indigo, L.L.C., a public charter operator.

On February 4, 2002, AirServ filed an application for an exemption to allow it to deviate from the condition in its certificates in order to operate newly-manufactured, specially-configured Embraer ERJ-135LR jet aircraft. Typically, the ERJ-135 is delivered in a high-density regional airliner configuration with 37 passenger seats installed. With that configuration, AirServ would be required by the FAA to obtain a Part 121 certificate.

By contrast, the ERJ-135 built specifically for AirServ will be equipped with 18 first class seats--comprising all of the passenger seating--and a maximum payload capacity of less than 7,500 pounds. AirServ believes that it could operate the ERJ-135 under its current 30-seat certificate limitation. However, out of an abundance of caution and because the ERJ-135 airframe can accommodate as many as 37 passengers, AirServ requests an exemption from the certificate condition or, as an alternative, reissuance of its certificates keyed to a Part 135-versus-Part 121 delineation as the Department did in another recent case.¹

Decision

Because AirServ wants to operate aircraft *designed* to hold more than 30 seats, it cannot do so under the limitations imposed in its certificate. After receipt of AirServ's request, we contacted the FAA who has confirmed that the new aircraft can be operated in charter service under Part 135 as long as AirServ stays within the 18-seat configuration. As a result, we have decided to allow AirServ to operate the ERJ-135 as proposed. However, rather than grant the carrier's exemption request, we have decided to reissue AirServ's certificates to replace its current certificate condition with a provision authorizing AirServ to use any aircraft that can be operated under its Part 135 certificate, provided such aircraft also meet the definition of small aircraft pursuant to 14 CFR Part 298. That will allow the carrier additional flexibility if it wants to operate other such aircraft. Should AirServ subsequently desire to acquire and operate larger aircraft that would require certification from the FAA under Part 121, the carrier must first be determined fit for such operations.

ACCORDINLY, Acting under authority assigned by the Department in its Regulations, 14 CFR 385.12:

1. We reissue to Air-Serv., Inc. d/b/a AirServ, d/b/a Indigo, L.L.C., and d/b/a NewWorldAir Holdings, Inc., the interstate charter passenger certificate issued by Order 2000-8-10 and the foreign charter passenger certificate issued by Order 2000-10-25 in the attached form to replace the certificate condition limiting AirServ to the operation of aircraft designed for no more than 30 seats with a provision authorizing it to operate any aircraft as permitted by the Federal Aviation Administration under Part 135, provided such aircraft also meet the definition of small aircraft pursuant to 14 CFR Part 298.
2. We dismiss as moot AirServ's request for an exemption from its certificate conditions in order to operate Embraer ERJ-135LR aircraft.
3. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

¹ See *Daystar Airways, Ltd. d/b/a Nevis Express*, Docket OST-99-5062, Order 2001-5-29

The action in this order is effective immediately and the filing of a petition for review shall not alter its effectiveness.

By:

RANDALL D. BENNETT
Director
Office of Aviation Analysis

(SEAL)

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<http://dms.dot.gov>*



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

(as reissued)

This Certifies That

**AIR-SERV., INC.
d/b/a AIRSERV
d/b/a INDIGO, L.L.C.
d/b/a NEWWORLDAIR HOLDINGS, INC.**

is authorized, subject to the provisions of Subtitle VII of Title 49 of 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 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 2002-2-17
On February 26, 2002
Effective on February 26, 2002

*Randall D. Bennett
Director
Office of Aviation Analysis*



Terms, Conditions, and Limitations

**AIR-SERV., INC. d/b/a AIRSERV
d/b/a INDIGO, L.L.C.
d/b/a NEWWORLD AIR HOLDINGS, INC.**

is authorized to engage in interstate charter 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 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's authority 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.*
- (3) The holder's authority is limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulations with aircraft that are "small" aircraft as defined in 14 CFR Part 298. In the event that the holder wishes to institute operations that would require Part 121 certification from the FAA, it must first be determined fit for such operations.*
- (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.*

**This certificate is being reissued to authorize the holder to operate any aircraft pursuant to Part 135 of the Federal Aviation Regulations.*

(6) *The holder is not authorized to engage in air transportation operations between points within the State of Alaska.*

(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 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.*



Certificate of Public Convenience and Necessity
for
Foreign Charter Air Transportation

(as reissued)

This Certifies That

AIR-SERV., INC.
d/b/a AIRSERV
d/b/a INDIGO, L.L.C.
d/b/a NEWWORLD AIR HOLDINGS, 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 2002-2-17
On February 26, 2002
Effective on February 26, 2002

Randall D. Bennett
Director
Office of Aviation Analysis



Terms, Conditions, and Limitations

AIR-SERV., INC. d/b/a AIRSERV
d/b/a INDIGO, L.L.C.
d/b/a NEWWORLD AIR HOLDINGS, 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's authority is limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulations with aircraft that are "small" aircraft as defined in 14 CFR Part 298. In the event that the holder wishes to institute operations that would require Part 121 certification from the FAA, it must first be determined fit for such operations.*

**This certificate is being reissued to authorize the holder to operate any aircraft pursuant to Part 135 of the Federal Aviation Regulations.*

(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) *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 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 AIR-SERV., INC.

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