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

Issued by the Department of Transportation
on the **21st day of June, 2001**

Served: June 26, 2001

Fitness Determination of

ORLANDO AIR LINK, INC.

as a commuter air carrier under section
49 U.S.C. 41738

Docket OST-00-8254 - 8

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF COMMUTER AIR CARRIER AUTHORITY**

Summary

By this order, we tentatively find that Orlando Air Link, Inc. (OAL) is a citizen of the United States and is fit, willing, and able to conduct scheduled passenger operations as a commuter air carrier using aircraft with no more than nine seats.

Background

Section 41738 of Title 49 of the United States Code ("the Statute") and section 298.21(d) of the Department's Aviation Economic Regulations direct us to determine whether companies proposing to provide scheduled passenger service as commuter air carriers are "fit, willing, and able to perform the service," and to ensure that all operations relating to this service conform to the safety standards established by the Federal Aviation Administration (FAA). 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 carrier's fitness are whether the applicant: (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) has sufficient financial resources to commence the operations proposed without posing an undue risk to consumers or their funds, and (3) will comply with the Statute and regulations imposed by federal and state agencies. We must also determine that the applicant is a U.S. citizen.

On November 6, 2000, OAL filed an application in Docket OST-00-8254 for authority to provide scheduled passenger operations as a commuter air carrier pursuant to section 41738 of the Statute. Fitness information, required by section 204.3 of our regulations, was provided with the application as well as in four subsequent submissions.¹

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. Upon review of the information in the application and the safety and compliance information on the carrier received from the FAA, we tentatively conclude that OAL is a U.S. citizen and has met the fitness test to conduct commuter operations. We will, however, give interested parties an opportunity to show cause why we should not adopt as final our tentative determination that OAL is fit, willing, and able to provide commuter service.

The Company

OAL, a Florida corporation based in Orlando, was founded by Paul Pent in 1997. Since its founding, OAL has flown a small number of charter flights as a Part 135 on-demand air taxi service using a nine seat Piper Chieftain aircraft.² If found fit, OAL proposes to provide scheduled service from Orlando to Tallahassee, Ft. Lauderdale, and Marsh Harbor, Bahamas.³ OAL will use its single Piper Chieftain to conduct its initial commuter operations.⁴

FITNESS

Managerial Competence

Mr. Paul Pent, OAL's founder, owns 80 percent of OAL's stock and serves as the company's President. Mr. Pent, an Airline Transport Pilot, owned and operated Pent Air Express, an air taxi operator between 1984 and 1987.⁵ He was employed as a

¹ Orlando filed information supplementing its application on December 28, 2000, and April 6, May 10, and May 24, 2001.

² This aircraft is leased from Pent Aircraft Leasing and Sales, a wholly owned subsidiary of OAL.

³ Some of these operations will not be conducted at the commuter level of service. That is, in certain markets, OAL intends to operate fewer than five scheduled round trips per week.

⁴ OAL has plans to add one additional aircraft during its second year of operations and two additional aircraft during its third year of operations.

⁵ Also, from 1977-1987, Mr. Pent owned and operated a landscape and irrigation business. This company and Pent Air Express were both based in Jacksonville, Florida.

pilot for Comair between 1987 and 1992. Presently, Mr. Pent manages a financial consulting service. He plans to divide his time between OAL and his other non-aviation business interests, spending, on average, approximately 75 percent of his workweek on OAL-related matters.

Mr. Greg O'Neal serves as OAL's Chief Pilot and Director of Operations. An Airline Transport Pilot with almost 18,000 flight hours, Mr. O'Neal has worked as a pilot for Comair since 1987.⁶ Presently, he spends 10 percent of his time working for OAL. After OAL begins scheduled service, Mr. O'Neal will increase the number of hours worked at OAL.⁷ However, he will also continue to work as a pilot for Comair. The FAA is aware of this arrangement and has indicated that it is acceptable at present. Should OAL's operations increase to more than its current single aircraft, the FAA intends to reevaluate this arrangement.

Mr. James Teski, an Airframe and Powerplant Mechanic, is slated to become OAL's Director of Maintenance when the company begins scheduled operations. He is a graduate of Embry Riddle University where he earned a B.A. in Aviation Maintenance Management. Mr. Teski is presently employed as Director of Maintenance by the Daytona Beach Jet Center where he has worked for the past 26 years.⁸

In view of the experience and background of the applicant's key personnel, we tentatively conclude that OAL has assembled a management team that has the managerial skills and technical ability to conduct its limited proposed commuter operations. Moreover, the FAA has advised us that the carrier's key technical personnel and the current part-time nature of their employment with OAL are acceptable to it.⁹ However, OAL will need to separate the key technical positions of Chief Pilot and Director of Operations and employ full-time employees in these positions, as well as in the Director of Maintenance position, before it can significantly expand its commuter operations beyond the limited level proposed herein. Therefore, we will impose a specific reporting requirement on OAL so that

⁶ Prior to his employment by Comair, Mr. O'Neal worked as a corporate and air taxi pilot for a number of different companies between 1978 and 1987.

⁷ Mr. O'Neal is assisted in overseeing OAL's operations by Mr. Richard McNutt, a retired naval aviator, who serves as OAL's Assistant Chief Pilot.

⁸ Mr. Teski will remain an employee of this company while serving as OAL's Director of Maintenance. Daytona Beach Jet Charter provides all of OAL's maintenance under contract.

⁹ 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 their skills and technical ability.

we can monitor its managerial capabilities to support a larger operation. This reporting requirement is detailed in the **Effective Commuter Authorization Condition and Limitations** section of this order.

Financial Condition and Operating Proposal

If granted the commuter authority it seeks, OAL proposes for its first nine months of scheduled service to operate the following flights: five round trip flights each week between Orlando and Tallahassee and two round trips each week between Orlando and Marsh Harbor, Bahamas. During the final quarter of its first year of scheduled service, OAL plans to add five weekly round trips between Orlando and Ft. Lauderdale. The carrier will provide this service with the nine-passenger Piper Chieftain that it leases from Pent Aircraft Leasing and Sales.¹⁰ Within two years, OAL plans to have a three-plane operation with additional service to these points.

OAL has paid all of its pre-operating expenses as they were incurred and has stated that it does not anticipate any significant remaining pre-operating costs.¹¹

OAL is projecting first-year total operating expenses of \$311,520 based on flying 1,320 hours of scheduled service. After reviewing the carrier's cost estimates, in light of our past experience with other small start-up commuter airlines, we believe OAL's expense projections are reasonable. Therefore, based on our analysis of

¹⁰ OAL has stated that should it require a back-up aircraft for its initial operations it intends to wet-lease such aircraft from other "charter" companies. Under the Department's rules, OAL may not utilize the services of an air taxi operator to perform its scheduled passenger services. This is because a carrier operating on behalf of another air carrier through a wet-lease must have the same underlying operating authority in its own right to conduct the particular service being provided. Section 41738 of the Statute and section 298.21(d) of our rules require that an air carrier that operates scheduled passenger service five times or more a week under a published schedule must first be found fit. Therefore, the Department has consistently held that an on-demand air taxi operator may not operate part of a commuter's published schedule under a subcontract without itself first being found fit. We expect that OAL will comply with these requirements and wet-lease any needed back-up for its commuter operations only from other fully authorized commuters.

¹¹ The most significant pre-operating cost to date was \$32,000 for maintenance to OAL's aircraft. This expense has already been paid. In addition, the company has stated that no deposits are required for it to obtain the ground and office facilities needed for its commuter operations. Further, the company has already completed, and paid for, most of the steps required to obtain commuter operations specifications from the FAA. Finally, to the extent that OAL will incur increased insurance and training expenses as a result of its institution of commuter operations, it has included these expenses in its first year operating cost forecast.

OAL's forecast, it appears that the carrier will need approximately \$80,000 to meet the Department's financial fitness criteria for its proposed commuter operations.¹²

As evidence of its ability to meet this requirement, OAL provided the following financial information: first, a letter of verification showing a line-of-credit from Putnam State Bank of \$92,000. Of this balance, \$35,000 has been drawn down leaving an available balance of only \$57,000. However, prior to its commencement of commuter operations, OAL expects to pay down \$20,000 of its credit line balance with funds from its on-going charter business and Mr. Pent's other business activities. That will bring the available credit line balance up to \$77,000 on the date the carrier begins scheduled service. Second, OAL has an untapped \$10,000 line-of-credit with American Express Small Business Services. Third, most of the capital required to start OAL's charter business has come from Paul Pent's personal financial resources. Mr. Pent has stated that he is willing to continue supplying funds to support OAL's proposed commuter operations, if required.

The above lines-of-credit, which will total \$87,000 on the day OAL plans to begin scheduled service, appear to be adequate to cover the financial requirements for its initial commuter operations. Therefore, we tentatively conclude that OAL will have access to resources sufficient to allow it to commence its proposed commuter operations without posing an undue risk to consumers or their funds. However, as all of the required funds are not currently available to OAL, we will require that the company provide updated third-party verification that funds sufficient to meet our financial fitness criteria are actually available prior to making OAL's commuter authorization effective.

Compliance Disposition

We also tentatively conclude that OAL has the proper regard for the laws, rules, and regulations governing its services to ensure that its aircraft and operations conform to applicable safety standards and that acceptable consumer relations practices will be followed.

OAL has stated that there have been no charges of fraud, felony or antitrust violations, or of unfair, anticompetitive or deceptive business practices filed against it, its owners, or its key personnel, nor are there any outstanding judgments or pending

¹² To meet the Department's financial fitness criteria, an applicant should have access to financial resources sufficient to cover its pre-operating expenses and the expenses that are reasonably projected to be incurred during three months of operations, or \$77,880 in this case. In calculating available resources, projected revenues may not be used. In addition, since OAL's most recent balance sheet reflects a modest negative working capital balance of \$1,875, we consider that amount as a pre-operating expense and have added it to the total required to meet our financial fitness criteria.

actions against any of these parties. Moreover, our search of the Department's records found no compliance problems involving OAL, its owners, or its key personnel. Further, the FAA has advised us that it has no objections to the Department's grant of OAL's request for commuter authority.¹³

CITIZENSHIP

49 U.S.C. 41102 requires that authority 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.

In the case of OAL, Mr. Paul Pent, its founder, owns 80 percent of the company's issued and outstanding stock. No other individual owns a significant interest (10 percent or greater) in OAL.¹⁴ Further, all of OAL's key personnel are U.S. citizens and the company has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute and that it is actually controlled by U.S. citizens. Our review of the applicant has uncovered no reason to suggest that control of OAL rests with non-U.S. citizens.

Based on the above, we tentatively conclude that OAL is a citizen of the United States and is fit, willing, and able to provide the limited scheduled passenger service it proposes as a commuter air carrier.

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 that persons objecting to our tentative findings and conclusions will support their objections with relevant and material facts. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order

¹³ In order to conduct the proposed commuter operations, OAL must also obtain appropriate revisions to its operations specifications to authorize scheduled passenger service. The FAA indicates that this request is being processed and that there do not appear to be any matters of concern.

¹⁴ Most of the remainder of this stock continues to be held by Mr. Pent. It has, however, been pledged to current employees of OAL and will be issued to these individuals should they remain with the company for a minimum of three years.

that will make final our tentative findings and conclusions with respect to OAL's fitness and commuter authority.

EFFECTIVE COMMUTER AUTHORIZATION CONDITIONS AND LIMITATIONS

In the event that we find OAL fit, willing, and able to conduct the proposed commuter service, we will issue to it a Commuter Air Carrier Authorization. However, that authorization will not become effective until the carrier has fulfilled all requirements for effectiveness as set forth in the Terms, Conditions, and Limitations attached to its authorization.¹⁵ Among other things, this includes our receipt of evidence that the carrier has been issued Operations Specifications by the FAA authorizing scheduled passenger service under Part 135 of the Federal Aviation Regulations, evidence of liability insurance coverage that meets the requirements of Part 205 of our rules for commuter air carriers, and evidence that OAL has adequate financial resources available to it to meet our financial fitness criteria.

Moreover, given the relatively limited scope of OAL's proposed operations and the relatively small number of employees, we will impose certain limitations on the company's authorization to provide commuter air transportation. Also, our findings regarding the adequacy of OAL's financial resources may not hold true if the company were to substantially change the scope of its operations. Thus, should OAL propose to operate any aircraft with a seating capacity (by original design) of more than nine-passenger seats, it must first be found fit by the Department to do so. Further, at the time its operations reach a point where the FAA requires OAL to separate the functions of its Chief Pilot and Director of Operations or to employ a full-time employee in these positions, or in the Director of Maintenance position, OAL must notify the Department and provide resume and compliance on the individuals hired.

Furthermore, we remind OAL 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 commuter 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. In this regard, should OAL propose any substantial changes in its ownership, management, or operations, it must first comply with the

¹⁵ We also reserve the right to stay the effectiveness of OAL's authority if any new information becomes available to us that warrants such action.

requirements of section 204.5 of our rules.¹⁶ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under the Statute.¹⁷

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue an order finding that Orlando Air Link, Inc., is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier using aircraft with no more than nine-passenger seats.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the award of authority 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-00-8254, 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.

¹⁶ The carrier 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 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 commuter authority.

¹⁷ We also remind OAL about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the commuter 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 commuter 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.

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.¹⁸
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 set out here and awarding Orlando Air Link, Inc., a Commuter Air Carrier Authorization, subject to the attached specimen Terms, Conditions, and Limitations.
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 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>

¹⁸ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



Specimen
Terms, Conditions, and Limitations

ORLANDO AIR LINK, INC.

is authorized to engage in scheduled passenger air transportation operations as a commuter air carrier.

This authority is subject to the following provisions:

(1) The authority to conduct scheduled passenger operations 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 interstate scheduled passenger operations, 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 requirements of 14 CFR Part 298 and any other regulations prescribed by the Department of Transportation for the services authorized here, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*
- (4) *The holder may not operate aircraft designed to have a maximum passenger capacity of more than nine seats. In the event that the holder wishes to institute operations with aircraft having a larger capacity, it must first be determined fit for such operations.*
- (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 this authority 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 authority.*
- (8) *The holder shall maintain in effect at all times with the Department of Transportation current information on OST Registration Form 4507.*
- (9) *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.*

(10) 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.

(11) In the event that the holder does not commence actual flying operations as a commuter air carrier under this authority within one year of the date of the Department's determination of its fitness, its commuter authority shall be revoked for dormancy. Further, in the event that the holder commences but subsequently ceases all scheduled passenger operations, the authority granted here 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 such operations within one year of its cessation, its commuter authority shall be revoked for dormancy.

ATTACHMENT A

SERVICE LIST FOR ORLANDO AIR LINK, INC.

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