



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

SERVED: June 14, 2002

Issued by the Department of Transportation
on the 11th day of April, 2002

Application of

CHEROKEE AIR, LTD.

for renewal of foreign air carrier permit under
49 U.S.C. § 41301

Docket OST-2001-9566

ORDER RENEWING FOREIGN AIR CARRIER PERMIT

Summary

In this order we are renewing the foreign air carrier permit of Cherokee Air, Ltd. to perform charter foreign air transportation of persons, property and mail between the Commonwealth of the Bahamas (the Bahamas) and Florida, limited to operations involving small aircraft, for a period of five years.

Application

By application filed April 26, 2001, as supplemented, Cherokee Air requests that we renew its existing foreign air carrier permit to conduct charter foreign air transportation of persons, property and mail between the Bahamas and Florida, with small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).¹

No answers were filed in response to Cherokee Air's permit renewal application.

¹ By Order 96-5-8, effective May 6, 1996, we issued Cherokee Air an initial foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between the Bahamas and Florida, without limitation as to aircraft size that could be used for the authorized services. The authority was effective for a period of five years, through May 6, 2001. In 1998, Cherokee Air requested that we amend its then effective foreign air carrier permit to limit its services to those operated with small aircraft only. By Order 99-2-5, effective February 8, 1999, we issued Cherokee Air the requested amended foreign air carrier permit for a term coextensive with its initial foreign air carrier permit in Order 96-5-8.

Decision

We have reviewed the record in this case and have decided to grant the application using simplified Subpart B procedures.² The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.³ The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Cherokee Air is qualified to conduct the proposed operations.

Public Interest Considerations

Charter operations between the United States and the Bahamas are based on comity and reciprocity. We have no reason to believe that the Government of the Bahamas would act unfavorably on a U.S. carrier request to conduct charter operations in the U.S.-Bahamas market. Moreover, a number of U.S. carriers provide various scheduled services between the United States and the Bahamas.⁴ Therefore, we find that adequate comity and reciprocity and our overall aviation relationship with the Bahamas support favorable action on Cherokee Air's application.

Operational and Financial Fitness

We find that Cherokee Air is operationally and financially fit to conduct the operations at issue here. Cherokee Air has been conducting passenger charter operations to and from the United States since 1990, has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five years. Cherokee Air holds effective authority from its homeland to conduct the proposed operations. As noted above, Cherokee Air's current foreign air carrier permit, limited to small aircraft operations, was issued by Order 99-2-5. By memorandum dated November 27, 2001, the Federal Aviation Administration advised us that it knows of no reason why Cherokee Air's request to renew its foreign air carrier permit should not be approved. We have verified Cherokee Air's compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

Finally, Cherokee Air has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds. Specifically, for the year ending December 31, 2000, Cherokee Air reported total assets of approximately \$728

² 14 CFR §§ 302.210 (a)(2) and 302.213.

³ 66 FR 26905, May 15, 2001.

⁴ See OAG Flight Guide, North America, March 2002.

thousand; total liabilities of \$77 thousand; and owners' equity of \$651 thousand. For the year ending December 31, 2000, Cherokee Air reported a profit of \$105 thousand. For the year ending December 31, 1999, Cherokee Air reported total assets of \$573 thousand; total liabilities of \$28 thousand; and owners' equity of \$545 thousand. For the year ending December 31, 1999, Cherokee Air reported a profit of \$137 thousand.

Ownership and Control

We find that Cherokee Air is a privately held Bahamian corporation, substantially owned and effectively controlled by citizens of the Bahamas.⁵

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to renew the foreign air carrier permit of Cherokee Air in the form attached;
2. Cherokee Air is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined in § 313.4(a)(1) of our Regulations;⁶ and
5. The public interest does not require an oral evidentiary hearing on the application.

ACCORDINGLY,

1. We issue, in the form attached, a foreign air carrier permit to Cherokee Air, Ltd. authorizing it to engage in charter foreign air transportation of persons, property and mail between any point or points in the Bahamas and any point or points in Florida, limited to operations with small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds);

⁵ Faron S. and Esther B. Sawyer, Bahamian citizens, are the sole owners of Cherokee Air.

⁶ This finding is based on the fact that the grant of this permit will not result in a near-term net annual change in aircraft fuel consumption of 10 million gallons or more.

2. Cherokee Air shall also be authorized to engage in other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters;
3. The exercise of the privileges granted above are subject to Cherokee Air's compliance with the conditions listed in Attachment A;
4. To the extent not granted, we deny all requests for relief in Docket OST-2001-9566;
5. Unless disapproved by the President of the United States under § 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for § 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁷ and
6. We will serve a copy of this order on Cherokee Air; the Ambassador of the Commonwealth of the Bahamas in the United States; the Department of State (Office of Aviation) and the Federal Aviation Administration (Miami-IFO).

By:

READ C. VAN DE WATER
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/reports/reports_aviation.asp*

⁷ This order was submitted for § 41307 review on April 11, 2002. On June 13, 2002, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

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PERMIT TO FOREIGN AIR CARRIER
(as renewed)

Cherokee Air, Ltd.

A Flag Carrier of the Bahamas

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code, and the orders, rules, and regulations of the Department of Transportation, to engage in charter foreign air transportation of persons, property and mail as follows:

Between any point or points in the Bahamas and any point or points in Florida.

The holder shall also be authorized to engage in other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached, and to the following:

1. In the conduct of the operations authorized, the holder shall use only small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds);
2. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.
3. This permit shall be subject to the condition that in the event any practice develops which the Department of Transportation regards as inimical to fair competition, the holder and the Department of Transportation will consult and will use their best efforts to agree upon modifications satisfactory to the Department of Transportation and the holder.

This permit shall be effective on June 13, 2002, and shall terminate five years thereafter. However, this permit shall terminate upon the dissolution or liquidation of the holder to which it was issued. Authority under this permit shall be subject to termination at any time if the authority to conduct flight operations to and from the holder's homeland to any U.S. carrier authorized by the United States is denied, canceled, or unreasonably restricted; provided, however, that if during the period this permit is effective, the operation of the foreign air transportation authorized become the subject of any treaty, convention, or agreement to which the United States and the holder's homeland are or shall become parties, this permit shall continue in effect during the period provided in such treaty, convention, or agreement.

The Department of Transportation has executed this permit and affixed its seal on April 11, 2002.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of

carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

- (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).



