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Order 2001-3-7

Served: March 7, 2001



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

Issued by the Department of Transportation  
on the 6th day of March, 2001

Application of

**CORPORATE FLIGHT MANAGEMENT, INC.  
and  
CORPORATE AIRLINES, INC.**

**Docket OST-2000-8291-3**

for a transfer of commuter air carrier authority under 49  
U.S.C. 41105

**ORDER TRANSFERRING COMMUTER AUTHORITY**

**Summary**

By this order, we transfer to Corporate Airlines, Inc., the commuter air carrier authority currently issued to Corporate Flight Management, Inc.

**Background**

Corporate Flight Management, Inc. (CFM), based in Smyrna, Tennessee, was founded in 1982 and commenced on-demand air taxi services in 1986. In 1995, the company was found fit to conduct scheduled passenger operations as a commuter air carrier.<sup>1</sup> Initially, CFM provided commuter services from Nashville to other cities in Tennessee and neighboring states using two leased 19-seat Jetstream J-32 aircraft. Today, most of the carrier's operations are conducted pursuant to agreements it has since entered into with Midway Airlines and Trans World Airlines (TWA).<sup>2</sup> As of December 31, 2000, the company provided its scheduled passenger services with 15 leased 19-seat Jetstream J-32 aircraft. It anticipates leasing an additional three aircraft during 2001, two of which will be used if it is selected as the essential air service carrier at Owensboro, Kentucky, and Jackson, Tennessee.

<sup>1</sup> See Order 95-8-2, issued August 2, 1995. CFM's commuter authority was made effective on November 27, 1996. See Order 96-12-22, issued December 16, 1996.

<sup>2</sup> Under its arrangements with Midway, CFM provides service between Raleigh-Durham, North Carolina, and Norfolk, Virginia, New Bern and Wilmington, North Carolina, and Myrtle Beach, Charleston, Columbia, and Greenville-Spartanburg, South Carolina. Its arrangements with TWA include services between St. Louis, Missouri, and Burlington, Iowa, Quincy and Marion, Illinois, and Kirksville, Ft. Leonard Wood, and Cape Girardeau, Missouri. Finally, it provides scheduled flights between Nashville and Atlanta, Georgia, in its own name.

From the beginning, CFM has conducted its scheduled passenger operations separately from its on-demand air taxi services. To this end, the company uses different aircraft for its commuter operations. With the exception of its President, Charles Howell IV, all of the personnel of the commuter services division are separate from those working in the other aspects of the company's business. The company uses a trade name--initially, Corporate Express Airlines and more recently, Corporate Airlines--to distinguish its scheduled passenger services from its other operations.<sup>3</sup>

CFM has now decided to spin off its commuter operations into a separate corporate entity, Corporate Airlines, Inc. (CAI). Towards this end, on November 13, 2000, CFM and CAI filed an application in Docket OST-2000-8291 requesting that the Department transfer the commuter authority currently held by CFM to CAI.

No objections to the application have been filed in the docket.

### **Decision**

As discussed below, after reviewing the information CFM and CAI have provided, we find that it is in the public interest to transfer the commuter authority currently held by CFM to CAI.

#### Public Interest

Section 41105 of Subtitle VII of Title 49 (49 U.S.C. 41105) permits the Department to approve a transfer of a carrier's authority if it finds that the transfer is consistent with the public interest criteria of that section. The primary decisional criteria in determining the public interest are whether the acquiring entity is a U.S. citizen and will be fit to hold the authority being transferred. Moreover, section 41105(b) requires the Department to analyze the impact of the transfer on the viability of the carrier applicants, competition in the domestic airline industry, and the trade position of the United States in the international transportation market.

After reviewing the pleadings and other data available to the Department, we find that the proposed transaction warrants approval under the decisional criteria. As discussed below, we conclude that CAI is a U.S. citizen and that it is fit, willing, and able to conduct scheduled passenger air transportation under the transferred authority. In addition, we find that approval of the transfer will not negatively impact the viability of CFM or competition in the domestic airline industry. As noted in this order, CFM has always separated its commuter operations from its other business. Thus, the transfer approved here simply formalizes the carrier's past practices. In addition, the issue of the impact on the trade position of the United States in the

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<sup>3</sup> In addition to its scheduled passenger flights, CFM is a fixed base operator at Smyrna and Nashville, Tennessee, and conducts on-demand air taxi operations.

international air transportation market is not applicable in this case since no foreign operations are at issue here.

### Fitness

The proposed transaction is essentially a corporate restructuring. All of the assets, operations and personnel currently assigned to the Corporate Airlines division of CFM will be transferred to CAI. While the transfer will result in some changes in the carrier's ownership structure, it will not affect CAI's citizenship.<sup>4</sup> Currently, S&S Enterprises, a U.S. citizen, holds approximately 30 percent of CFM'S's stock.<sup>5</sup> S&S Enterprises is a partnership owned by James Richard Story III and Antonio Santini, both of whom are U.S. citizens.<sup>6</sup> Eighty-five percent of CAI's stock is owned by ILC, Inc., a Tennessee corporation also owned by Messrs. Story and Santini. The remaining 15 percent of the stock will be distributed to management employees as stock options.<sup>7</sup> All of the carrier's key personnel are U.S. citizens.

We also find that CAI's management team will be qualified to oversee its operations, that it will have sufficient financial resources to continue CFM's commuter operations without undue risk to consumers or their funds, and that it has a satisfactory compliance posture. Charles Howell IV, CFM's long-time President, will be President of CAI and all of the employees of the Corporate Airlines division will be transferred to CAI.<sup>8</sup> In addition to Mr. Howell, the following individuals, all of whom have held their positions with the carrier for at least one year, will hold key management/technical positions with CAI: Christopher Turnbull (Director of Operations), Donald Channel (Chief Pilot), Charles Morris (Director of Safety), Peter Holm (Chief Inspector), Thomas Cassel (Director of Maintenance), and Fred Breeden (Chief Financial Officer).<sup>9</sup> The carrier has provided resumes for each of these individuals, our review of which indicates that they are qualified for their respective positions.<sup>10</sup>

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<sup>4</sup> The authority to engage in air transportation operations may be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section specifies that the corporation must be organized under the laws of a state of the United States, that the president and two-thirds of the board of directors and other managing officers must be U.S. citizens, and that at least 75 percent of the outstanding voting stock must be owned and controlled by U.S. citizens.

<sup>5</sup> The remaining CFM stock is held by 18 other parties, three of which--James Allen Howell (approximately 20 percent), David Augustin (approximately 20 percent), and Charles Howell IV (approximately 12 percent)--hold 10 percent or more of the stock.

<sup>6</sup> As we noted in Order 96-12-22, S&S Enterprises committed to providing most of the funding needed to finance the commencement of CFM's scheduled passenger services.

<sup>7</sup> No employee is expected to hold 10 percent or more of the company's stock.

<sup>8</sup> Charles Howell will maintain an ownership interest in CFM, but will not serve as that company's President. His brother, James Allen Howell, will assume the responsibilities of President of CFM.

<sup>9</sup> Messrs. Howell, Santini and Storey will comprise CAI's three-person Board of Directors.

<sup>10</sup> In addition, we note that the FAA reviews the qualifications of the company's Directors of Operations, Maintenance, and Safety, Chief Inspector, and Chief Pilot for compliance with Part 119 of the Federal Aviation Regulations. We have communicated with the FAA about the carrier's key personnel, and been advised that the individuals holding these positions have been accepted by that agency.

With the exception of service to Owensboro and Jackson (if it is selected to provide essential air service at those points) the carrier plans no major changes in the scope of its commuter operations. It has provided an unaudited balance sheet reflecting the financial position of the Corporate Airlines division at December 31, 2000. At that date, it had \$605,000 in cash, negative working capital of \$364,000, with a current ratio of 0.92 to 1, total assets of \$6,139,000, and negative retained earnings and negative stockholders' equity of \$2,706,000 and \$2,705,000, respectively. It is expected that this statement will reflect the approximate financial position of CAI upon transfer of the commuter authority to CAI.

While the company's scheduled passenger services have, overall, been unprofitable, income statements included with the application indicate that its more recent commuter operations have been profitable. In this connection, these documents indicate that, for the 22-month period ending October 31, 2000, CFM's commuter operations experienced operating and net income of approximately \$2.1 million and \$917,267, respectively, on approximately \$43.7 million in total revenues.

The parties state 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 within the past 10 years, and that there are no judgments outstanding against any of these entities or individuals.

The carrier advises that it has been assessed one civil penalty (for \$18,000) by the FAA for a violation involving the company's failure to have drug tests properly reported and documented prior to placing safety sensitive personnel to work. The carrier advises that there are four other open alleged violations involving security procedures and that it is currently working with the FAA to resolve these issues. The FAA has advised us that the carrier's current operations are satisfactory and that, upon approval of the transfer by the Department, it intends to issue CAI its own FAA Air Carrier Certificate and Operations Specifications authorizing it to conduct scheduled passenger services as a commuter.

In light of all of the above, we conclude that CAI is a U.S. citizen and is fit, willing, and able to conduct the scheduled passenger operations currently conducted by CFM, and that the commuter air carrier authorization currently issued to CFM should be transferred to CAI.

The authority transferred here will not become effective until CAI has fulfilled all of the requirements for effectiveness as set forth in the Terms, Conditions, and Limitations attached to it. Among other things, this includes our receipt of evidence that CAI has actually received an Air Carrier Certificate and Operations Specifications from the FAA authorizing it to engage in scheduled passenger air transportation as well as evidence that it has obtained liability insurance coverage meeting the requirements of Part 205 of our rules.

We also remind CAI of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a company 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 CAI propose any substantial changes in its operations which would result in the operation of aircraft with a maximum seating capacity of more than 30 seats or a maximum payload of more than 7,500 pounds, we will require it to provide the information required by section 204.5 of our regulations and have its fitness redetermined prior to the commencement of any such operations.<sup>11</sup> Moreover, should the company undergo any other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our regulations.<sup>12</sup> The compliance of the carrier with this requirement is essential if we are to carry out our responsibilities under the Statute.<sup>13</sup>

**ACCORDINGLY**, Pursuant to authority assigned by the Department in its regulations, 14 CFR 385.12:

1. We find that Corporate Airlines, Inc., is fit, willing, and able to engage in commuter air carrier operations subject to the conditions contained in the attached Terms, Conditions, and Limitations.
2. We find that it is in the public interest to transfer to Corporate Airlines, Inc., the commuter air carrier authorization currently issued to Corporate Flight Management, Inc., and we reissue the authorization in the attached form to reflect the transfer of authority.
3. We will serve a copy of this order on the persons listed in Attachment A to this order.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within 10 days of the service date of this order.

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<sup>11</sup> This requirement is identical to that currently contained in the commuter authorization issued to CFM.

<sup>12</sup> CAI 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 CAI 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.

<sup>13</sup> We also remind CAI 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 commuter services within one year of the date of the Department's determination of its fitness; (2) if the company commences the operations for which it was found fit and subsequently ceases such operations for any reason, it may not resume such operations unless its fitness to do so has been redetermined, and (3) if the carrier does not resume operations within one year of its cessation, its commuter authority will be revoked for dormancy.

This order shall be effective and become the final action of the Department of Transportation upon the expiration of the above period unless within such period a petition for review is filed or the Department gives notice that it will review this order on its own motion.

By:

**RANDALL BENNETT**  
Director  
Office of Aviation Analysis

(SEAL)

*An electronic version of this document is available on the World Wide Web at  
<http://dms.dot.gov>*



## Commuter Air Carrier Authorization

### CORPORATE 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 scheduled passenger air transportation operations as a commuter air carrier.*

*This authorization is not transferable without the approval of the Department of Transportation.*

*By Direction of the Secretary*

*Issued by Order 2001-3-7  
On March 6, 2001  
Effective on (See Attached)*

*Randall Bennett  
Director  
Office of Aviation Analysis*

\*As reissued by  
Order 2001-3-7

*Attachment*



*Terms, Conditions, and Limitations*  
**CORPORATE AIRLINES, 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 Order in this case.*
- (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 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.*

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\* This authorization is being reissued to reflect the transfer of commuter authority from Corporate Flight Management, Inc., to Corporate Airlines, Inc.

- (4) *If the holder proposes to conduct operations with aircraft designed to have a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds, it must first file the information required by section 204.5 and have its fitness redetermined by the Department.*
- (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.*

**SERVICE LIST FOR CORPORATE FLIGHT MANAGEMENT, INC.  
AND CORPORATE AIRLINES, INC.**

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