

Served: March 19, 2002



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

Issued by the Department of Transportation
on the 19th day of March, 2002

Application of

**EXPRESSJET AIRLINES, INC.
d/b/a Continental Express**

for a disclaimer of jurisdiction and reissuance of
certificate or, alternatively, approval of the transfer of
operating authorities under 49 U.S.C. 41105

Docket OST-02-11708 - 2

**ORDER DISCLAIMING JURISDICTION
AND REISSUING CERTIFICATE**

Summary

By this order, we disclaim jurisdiction over the proposed transfer of the section 41102 interstate scheduled certificate and other operating authorities currently issued to ExpressJet Airlines, Inc. d/b/a Continental Express (ExpressJet) to New ExpressJet Airlines, Inc. d/b/a Continental Express (Newco), and reissue the certificate and other authorities in the name of New ExpressJet Airlines, Inc. d/b/a Continental Express.

Request for Disclaimer

ExpressJet currently holds a certificate authorizing it to engage in interstate scheduled passenger air transportation of persons, property, and mail,¹ as well certain U.S.-Mexico designation and code-share authority granted to it by the Department.² The carrier provides scheduled passenger services in connection with its current owner, Continental Airlines, Inc.

¹ See Order 2001-8-23, issued August 24, 2001.

² These designation and code-share authorities include: Houston-Veracruz (approved December 18, 2001, undocketed); Houston-Leon (approved September 13, 2000, undocketed); Houston-Monterrey/Guadalajara (approved June 15, 2000, undocketed); Houston-Ixtapa/Zihuatanejo (approved April 25, 2000, undocketed); Houston-San Luis Potosi/Aguascalientes (approved February 1, 2000, undocketed); Houston-Mazatlan (approved January 6, 2000, undocketed); Houston-Chihuahua/Salttillo/Torreon (approved April 1, 1999, undocketed); and Houston-Tampico (approved January 14, 1998, undocketed).

On February 26, 2002, ExpressJet filed an application in Docket OST-02-11708 requesting the Department to disclaim jurisdiction or, in the alternative, to approve the transfer of ExpressJet's certificate and other authorities to a newly formed, wholly owned subsidiary, Newco. In support of its request, ExpressJet states that the requested transfer of authority is incidental to an intra-corporate reorganization for other business purposes. The applicant states that ExpressJet intends to transfer all of its airline assets, liabilities, and operations to Newco in exchange for virtually all of Newco's stock.³ As a result, the applicant states that the transaction will have virtually no impact on the ownership and control of the airline, and the management, personnel, operations and equipment of ExpressJet will continue unchanged after this corporate transaction. In fact, once the corporate reorganization is complete, Newco intends to drop the "New" from its name, thus reassuming the ExpressJet Airlines, Inc., name. Finally, ExpressJet states that a disclaimer of jurisdiction by the Department is consistent with, and supported by, well-settled Department precedent.

Decision

Based on our review of information supplied by ExpressJet in its application, we have decided to disclaim jurisdiction over the transfer of ExpressJet's certificates to Newco, and to reissue ExpressJet's certificates in Newco's name. We find that the proposed corporate reorganization will have no significant effect on the actual ownership, control, management, citizenship, financial condition, or operations of the carrier.⁴ The FAA has advised us that ExpressJet's current operations are satisfactory and that that agency is aware of the carrier's restructuring plans. In similar circumstances in the past, the Department has disclaimed jurisdiction based on the conclusion that such corporate reorganizations were found not to be transfers within the meaning of section 41105 of the Statute.⁵ We reach that same conclusion here.

ACCORDINGLY, acting under authority assigned by the Department in its Regulations, 14 CFR 385.12:

1. We disclaim jurisdiction over the transfer of the section 41102 interstate scheduled air transportation certificate issued to ExpressJet Airlines, Inc. d/b/a Continental Express by Order 2001-8-23 to New ExpressJet Airlines, Inc. d/b/a Continental Express, and reissue that certificate in the name of New Express Jet Airlines, Inc. d/b/a Continental Express.

³ At the present time, Continental owns all of the stock of ExpressJet through ExpressJet's parent, ExpressJet Holdings, Inc. In connection with this transaction, ExpressJet intends to issue non-voting preferred stock of ExpressJet Holdings (amounting to approximately 0.5 percent of the total stock) to an unaffiliated third-party. Subsequently, approximately 35 percent of the stock of ExpressJet Holdings is expected to be sold to the public in an Initial Public Offering.

⁴ As noted above, the disclaimer sought here is part of a larger transaction wherein Continental intends to divest itself of a portion of its ownership interest in ExpressJet. Based on information available to us, however, it appears that, even after the completion of the planned public offering, Continental will still be the single largest shareholder in ExpressJet Holdings (over 60 percent) and will continue to exercise substantial control over the operations and activities of Newco.

⁵ See Orders 2002-1-17, 2000-3-19, 99-7-2 and 97-12-3.

2. The reissued certificate and other authority shall become effective upon the transfer of the assets, liabilities, operations, etc., of ExpressJet Airlines, Inc. d/b/a Continental Express to New ExpressJet Airlines, Inc. d/b/a Continental Express.⁶

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.

The action taken 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)

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

⁶ As noted earlier, once the transfer becomes effective, Newco intends to change its corporate name to ExpressJet Airlines, Inc. In order facilitate this transition, by this order, we are authorizing Newco to assume the ExpressJet Airlines, Inc., name at such time as the corporate reorganization has been completed. As part of that authorization, we require that, prior to the completion of the corporate reorganization, the carrier advise us of the effective date of the actual transfer and name change. Upon receiving such notification, we will reissue the carrier's authority to reflect the effective date and changed name.



**Certificate of Public Convenience and Necessity
for
Interstate Air Transportation
(as reissued)**

This Certifies That

**NEW EXPRESSJET AIRLINES, INC.
d/b/a CONTINENTAL EXPRESS**

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 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 2002-3-14
On March 19, 2002
Effective on (See attached)*

*Randall D. Bennett
Director
Office of Aviation Analysis*



Terms, Conditions, and Limitations

**NEW EXPRESSJET AIRLINES, INC.
d/b/a CONTINENTAL EXPRESS**

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 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 Department of Transportation requirements concerning security.*
- (3) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (4) 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.*
- (5) 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.*

**This certificate is being reissued to reflect a corporate reorganization and the reissuance of the certificate issued to ExpressJet Airlines, Inc. d/b/a Continental Express, to New ExpressJet Airlines, Inc. d/b/a Continental Express.*

(6) *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.*

(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 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.*

(9) *This certificate shall become effective upon the completion of the transfer of the assets, liabilities and operations of ExpressJet Airlines, Inc. d/b/a Continental Express to the holder.*

SERVICE LIST FOR EXPRESSJET AIRLINES, INC.

Mr. James B. Ream
President
ExpressJet Airlines, Inc.
P. O. Box 4607 - HQSCE
Houston, Texas 77210-4607

Mr. R. Bruce Keiner
Counsel for ExpressJet Airlines, Inc.
Crowell & Moring LLP
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595

Mr. Dick Dutton,
Asst. Manager, CSET, AFS-900
Federal Aviation Administration
45005 Aviation Dr., Ste. 131
Washington, D.C. 20166-7537

Mr. Peter Lynch, Asst. Chief Counsel
for Enforcement, AGC-300
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, D.C. 20591

Ms. Joni Mount, Product Manager
Official Airline Guide
2000 Clearwater Drive
Oak Brook, Illinois 60521

American Assn. of Airport Executives
601 Madison Street, Ste. 400
Alexandria, Virginia 22314-1756

Mr. Don Bright, Acting Manager
Office of Airline Information, K-25
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Ms. Lynette Wood
Regional Counsel, ASW-7
Federal Aviation Administration
Southwest Region Headquarters
2601 Meacham Blvd.
Fort Worth, Texas 76137-4298

Mr. Thomas E. Stuckey, Manager
Flight Standards Division, ASW-200
Federal Aviation Administration
Southwest Region Headquarters
2601 Meacham Blvd.
Fort Worth, Texas 76137-4298

Mr. Richard Taylor, POI
FAA Continental CMO
13100 Space Center Blvd., Ste. 5300
Houston, Texas 77059-3598

Mr. Jim Zammar, Dir. Revenue Acctg.
Air Transport Association
1301 Pennsylvania Ave., N.W., Ste. 1100
Washington, D.C. 20004

Mr. Allan Muten, Asst. Treasurer
Airlines Reporting Corp.
1530 Wilson Blvd., Ste. 800
Arlington, Va. 22209-2448