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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 7th day of November, 2001

Application of **FLIGHT ALASKA, INC.** **d/b/a YUTE AIR ALASKA, INC.** for reissuance of its section 41102 certificate to carry passengers	**Docket OST-01-10427 - 7** **SERVED: December 3, 2001**

ORDER DETERMINING FITNESS AND REISSUING CERTIFICATE AUTHORITY
ERRATUM

By Order 2001-11-2, served November 8, 2001, the Department found Flight Alaska to be fit, willing, and able to provide interstate air transportation of persons and reissued to the carrier its section 41102 certificate to reflect this fitness determination. However, several sentences, and parts of sentences, contained in the section of the order dealing with managerial competence were inadvertently dropped from the order as it was being prepared for distribution. Specifically, these sentences and parts of sentences begin at the bottom of page 2, three lines down from the first paragraph under the heading "Managerial Competence." We therefore attach, as a replacement, the complete order.

By:

RANDALL D. BENNETT
Director
Office of Aviation Analysis

(SEAL)

Dated: **November 28, 2001**

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ORDER 2001-11-2

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
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Issued by the Department of Transportation
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Application of **FLIGHT ALASKA, INC.** **d/b/a YUTE AIR ALASKA** for reissuance of its section 41102 certificate to carry passengers	Served: November 8, 2001 **Docket OST-01-10427**

ORDER DETERMINING FITNESS AND REISSUING CERTIFICATE AUTHORITY

Summary

By this order, we find that Flight Alaska, Inc. d/b/a Yute Air Alaska, is fit, willing, and able to provide interstate air transportation of persons and reissue its section 41102 certificate to reflect this fitness determination.

Background

Section 41102 of Title 49 of the United States Code ("the Statute") directs us to determine whether applicants for certificate authority to provide interstate air transportation are "fit, willing, and able" to perform such transportation, and to comply with the Statute and the regulations of the Department. In making fitness findings, we address three areas of inquiry: (1) will the applicant have the managerial skills and technical ability to conduct the proposed operations, (2) has the applicant sufficient financial resources to commence the operations proposed without posing an undue risk to consumers or their funds, and (3) will the applicant comply with the Statute and regulations imposed by federal and state agencies? We must also determine that the applicant is a U.S. citizen.

By Order 2000-4-16, issued April 17, 2000, the Department found that Flight Alaska, based in Anchorage, was fit to conduct interstate air transportation of property and mail using small aircraft (*i.e.,* aircraft operated under Part 135 of the Federal Aviation Regulations). The order also transferred to Flight Alaska the section 41102 certificate issued previously to Yute Air Alaska.[1] While the transferred certificate had authorized Yute to engage in air transportation of persons, property and mail, because Flight Alaska had not presented any

[1] *See* Order 98-7-6, issued July 8, 1998.

plans to provide scheduled passenger service, our findings with respect to Flight Alaska's fitness did not apply to any passenger operations. As a result, we limited the effectiveness of the transferred certificate to all-cargo operations. Moreover, the transferred certificate contained a condition that stated that, if Flight Alaska desired to operate any passenger operations under this certificate, it must first be determined fit for such operations.

On August 15, 2001, Flight Alaska filed an application in Docket OST-01-10427 to amend its section 41102 certificate to allow it to engage in passenger operations. Flight Alaska accompanied its application with the fitness information required by section 204.3 of our regulations.[2]

However, while Flight Alaska's application was being processed, we discovered that the carrier had been conducting on-demand passenger operations despite the limitations contained in its certificate. Upon further investigation, Flight Alaska stated that it believed that the restriction in its certificate applied to scheduled passenger operations and that its on-demand passenger operations were fully permissible pursuant to "authorizations conferred elsewhere by the FAA and the State of Alaska." This matter is discussed more fully in the section below dealing with compliance disposition.

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. Inasmuch as Flight Alaska has already been determined fit to operate as a certificated air carrier, we will not issue a show cause order but will, instead, proceed directly to a final order on the applicant's request. Upon review of the information in the application and the safety and compliance information on the carrier received from the FAA, we conclude that Flight Alaska continues to be a U.S. citizen and has met the fitness test to conduct passenger operations.

Managerial Competence

In Order 2000-4-16 the Department found that Flight Alaska's key management and technical personnel were qualified to perform their duties. Three of those individuals--Mr. David E. Sandlin, President and Chief Executive Officer, Mr. Robert C. Nelson, Vice President and Director of Safety, and Mr. Ronald L. Dudley, Chief Pilot--are still with the company in these same positions. However, since the issuance of that order in April 2000, three other members of Flight Alaska's key management team have been replaced with the following individuals now serving in the positions noted:

Mr. David Habetler, an Airframe and Powerplant mechanic, joined Flight Alaska as its Director of Maintenance in November 2000. Mr. Habetler began his career as a mechanic in the U.S. Army in 1984 and has held positions of increasing authority ever since. He has more than fifteen years of aircraft maintenance experience including, most recently, as

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[2] Flight Alaska filed information supplementing its application on August 15 and 22, and October 4, 2001. Flight Alaska requested that certain of this information be granted confidential treatment pursuant to 14 CFR 302.12. On October 23, these requests for confidential treatment were withdrawn.

Director of Maintenance for F.S. Air Service and as lead mechanic and station manager for Merlin Express.

Mr. Paul Ames joined Flight Alaska in January 2001 as its Chief Inspector. Mr. Ames brought more than twenty-five years of experience as an Airframe and Powerplant mechanic to the company. He is a former FAA Principal Maintenance Inspector and, between September 1984 and January 1989, was the owner of Deming Aircraft Maintenance, a Part 145 repair station. Immediately prior to assuming his duties with Flight Alaska, Mr. Ames was Director of Maintenance for F.S. Air Service. In addition to his Chief Inspector duties, Mr. Ames has also been assigned as Flight Alaska's Director of Quality Control and Maintenance Training.

In July 2001, Mr. Charles P. Caldwell became the carrier's Director of Operations replacing Stanley Ashland who has become its Director of CASA Programs. Mr. Caldwell is an Airline Transport Pilot who has accumulated nearly 12,000 hours in a variety of multi- and single-engine aircraft, as well as helicopters. In 1977 he began his flying career as a line pilot with Jen Air and then worked successively for ten other Alaska regional air carriers, including, among others, Pacific Air Transport, Evergreen Helicopters, and Cape Smythe Air Service.

Our review of the qualifications of Flight Alaska's current management and key technical personnel team finds that they possess the technical and aviation industry experience necessary to properly oversee the carrier's current and proposed operations. In addition, the FAA has reviewed their experience and background and found them to be satisfactory.[3]

Financial Plan and Operating Proposal

Since our April 2000 transfer of Yute's certificate authority to Flight Alaska, the company has conducted continuous operations. Moreover, these operations have grown significantly and, as a result, Flight Alaska now employs twice as many pilots and mechanics as it did in April 2000.

Flight Alaska's operations have not yet been profitable overall. The company reported a net loss of $376,752 on total revenues of $5.8 million for the twelve months ended April 30, 2001. However, during the months of May, June, and July 2001, Flight Alaska earned a small net profit of approximately $97,000. Despite its cumulative losses, Flight Alaska appears to be in adequate financial health overall with current assets of $785,494, current liabilities of $1.09 million (for a negative working capital position of approximately $304,500 and a current assets to current liabilities ratio of 0.72:1), and net stockholders' equity of $1.19 million, as of July 31, 2001.

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[3] The FAA evaluates certain of an air 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 the skills and technical ability of these individuals.

Moreover, Flight Alaska appears to have adequate resources to conduct the proposed limited passenger operations. Flight Alaska will use mostly existing assets and personnel to conduct the requested passenger operations, eliminating any significant startup expense. Specifically, Flight Alaska plans to use two 9-passenger CASA-212 aircraft currently in its fleet to provide scheduled service consisting of two round trips each day--one over a Bethel-Hooper Bay-Scammon Bay-Chivak-Bethel routing, the other over a Bethel-Chivak-Hooper Bay-Scammon Bay-Bethel routing--as well as a daily round trip between Deadhorse/Prudhoe Bay and Nuiqsut.[4] Later, Flight Alaska intends to expand its scheduled passenger service into the Bristol Bay/Kuskokwim Delta areas. Flight Alaska estimates that it will incur approximately $382,000 in operating expenses, on a quarterly basis, for these services. Given this estimate and the company's current negative working capital position, Flight Alaska will require access to $686,500 to meet our financial fitness criteria.[5] Flight Alaska has provided independent third-party verification that it has available to it through its parent, Flight International Group, a line-of-credit totaling $6.0 million, which is more than adequate to meet our financial fitness criterion.[6]

In light of the foregoing, we conclude that Flight Alaska has available sufficient financial resources to enable it to institute its proposed passenger operations without posing an undue risk to consumers or their funds.

Compliance Disposition

At the time of the transfer and reissuance of Yute's certificate to Flight Alaska in April 2000, Flight Alaska had no actions or outstanding judgments against it, its owners, or its key personnel. In the instant application the carrier states that there have been no charges of fraud, felony or antitrust violations, or of unfair, anticompetitive or deceptive business practices, filed against it since that time. Flight Alaska further states that there have been no formal complaints filed, or orders issued, finding the carrier in violation of the Statute or the Federal Aviation Regulations.

However, it has come to our attention that Flight Alaska has continued to operate on-demand passenger service despite the fact that, under the specific terms of Order 2000-4-16, the carrier is not authorized to conduct any type of passenger operations. According to Flight Alaska, the carrier's on-demand passenger operations, which were limited to points within Alaska, were noted in its application requesting transfer of authority and were approved by

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[4] Flight Alaska states that its initial markets are those that it is presently serving on an on-demand basis.

[5] In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of normal certificated operations. In cases such as here, where the applicant is already conducting some operations, our working capital reserve is generally based on the costs attributable to the operation of the services for which additional authority is being sought. In addition, if the company's current operations have resulted in a negative working capital position, the applicant must demonstrate access to funds covering this deficit as well. In calculating available resources, projected revenues may not be used.

[6] A copy of this line-of-credit with Wachovia Bank, N.A., was submitted as evidence.

the FAA and the State of Alaska. While it appears that Flight Alaska maintained its FAA-issued Operations Specifications for on-demand passenger operations, a decision to engage in any air transportation subject to 49 U.S.C. 41102, whether scheduled or charter, passenger or freight, renders a carrier's entire operation subject to Department jurisdiction and regulation. Therefore, a company that holds such economic authority from the Department may not conduct some operations under Department rules and authority and other flight operations under state-issued authority.

Even if Flight Alaska believed that it held authority to operate on-demand, intra-state passenger operations, the Department's order issuing the carrier's section 41102 certificate was explicit in its prohibition of passenger operations without further Department approval.

The order transferring Yute's certificate to Flight Alaska and restricting Flight Alaska's authority to operate passenger service did not differentiate between on-demand passenger operations and scheduled passenger operations. Accordingly, we referred this issue to the Department's Office of Aviation Enforcement and Proceedings. Although that Office is still investigating the matter, it has advised us that any action it might take should not preclude the carrier from receiving the authority requested here. Our review of Flight Alaska's operations has revealed no other compliance issues and the FAA has advised us that it has no objections to the Department's grant of Flight Alaska's request to amend its certificate to authorize scheduled passenger service.

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 Order 2000-4-16, we concluded that all of Flight Alaska's stock was held by individuals and other entities that met the above U.S. citizenship requirements. We also found that all of the carrier's key employees, with one exception, were U.S. citizens.[7] In its current application, Flight Alaska states that it continues to be wholly owned and controlled by the Flight International Group and is a citizen of the United States within the meaning of 49 USC 40102(a) (15).[8]

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[7] At the time of our order, Mr. Stanley Ashland, a citizen of Sweden, served as Director of Operations for Flight Alaska. While no longer Director of Operations, Mr. Ashland continues to be employed by Flight Alaska, serving as its CASA Programs Manager.

[8] Flight International Group is owned by David E. Sandlin (36.87 percent), John R. Boone (25.35 percent), Maritime Sales & Leasing, Inc. (9.82 percent), Charles T. Myers ((9.14 percent), Flight Partners LTD LP (5.41 percent), Southtrust Bank of Alabama, NA (9.68 percent), and Leaseplan USA, Inc. (5.53 percent). According to Flight Alaska, each of these entities is a U.S. citizen.

Our review of the applicant has uncovered no reason to suggest that control of Flight Alaska rests with non-U.S. citizens. Therefore, we conclude that Flight Alaska is a citizen of the United States and is fit, willing, and able to provide the passenger service it proposes as a certificated air carrier.

CERTIFICATE CONDITIONS & LIMITATIONS

Although we are finding Flight Alaska fit for passenger operations and reissuing its section 41102 certificate to reflect this finding, all of the passenger authority contained in the reissued certificate will not become effective immediately. Specifically, the scheduled passenger authority contained therein will not become effective until the company has provided evidence that it has been issued amended Operations Specifications by the FAA that authorize it to conduct scheduled passenger operations.[9]

Furthermore, we remind the company 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. Thus, should Flight Alaska propose substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.[10] The compliance of the company with this requirement is essential if we are to carry out our responsibilities under the Statute.[11]

ACCORDINGLY: Acting under authority assigned by the Department in its regulations, 14 CFR 385.12:

1. We find that Flight Alaska, Inc., is fit, willing, and able to engage in interstate scheduled air transportation of persons, property and mail.

2. We reissue to Flight Alaska, Inc., the section 41102 certificate issued to it by Order 2000-4-16 to make effective its authority to engage in on-demand passenger operations. The effectiveness of the authority to engage in scheduled passenger operations is subject to Flight

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[9] Flight Alaska has separately filed an Aviation Accident Family Assistance Plan with the Department (Docket OST-2001-10427) and with the National Transportation Safety Board. The carrier states that it does not intend to operate any covered international flight segments as defined in 14 CFR section 243.3, which would require the filing of a description of how the carrier intends to collect and transmit passenger manifest information.

[10] 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. In addition, 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 this updated 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 certificate authority.

[11] We remind the carrier about the requirements of section 204.7 of our rules. This section provides, among other things, that if the company ceases the operations for which it was found fit, it may not resume such operations unless its fitness has been redetermined, and, if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

Alaska's providing evidence that it has been issued amended Operations Specifications by the Federal Aviation Administration authorizing such service.

3. Nothing in this order shall preclude any enforcement action that the Department may take against Flight Alaska, Inc., for previously conducting on-demand passenger operations.

4. 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.

This order shall be 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

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

This Certifies That

FLIGHT ALASKA, INC.
d/b/a YUTE AIR ALASKA

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 2001-11-2
On November 7, 2001
Effective on (See Attached)

Randall D. Bennett
Director
Office of Aviation Analysis

**As reissued by*
Order 2001-11-2
Attachment

Terms, Conditions, and Limitations

FLIGHT ALASKA, INC.
d/b/a YUTE AIR ALASKA

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 to perform interstate scheduled transportation of property and mail became effective on April 17, 2000. The holder's authority to perform on-demand passenger air transportation became effective on November 7, 2001. The authority contained in this certificate to perform scheduled passenger air transportation will not become effective until six (business) days after the Department has received from the Federal Aviation Administration a copy of the carrier's amended Operations Specifications authorizing it to engage in such operations.

(3) The holder's authority is limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulations. 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'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.

(5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

**This certificate is being reissued to reflect the effective date for on-demand passenger operations.*

(6) 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.

(7) 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.*

(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 ceases all operations for which is 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.

Attachment A

SERVICE LIST FOR FLIGHT ALASKA, INC.

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