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ORDER 2001-9-4

Served: September 10, 2001



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 September, 2001

Applications of

BIZ JET SERVICES, INC.

for certificates of public convenience and necessity under 49 U.S.C. 41102 to engage in interstate and foreign charter air transportation of persons, property and mail

Dockets OST-01-9880-6
and
OST-01-9881-8

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF CERTIFICATES**

Summary

By this order, we tentatively conclude that Biz Jet Services, Inc., is a citizen of the United States, and is fit, willing, and able to provide interstate and foreign charter air transportation of persons, property, and mail, and should be issued certificates of public convenience and necessity authorizing such operations, subject to conditions.

Background

Section 41102 of Title 49 of the United States Code (Transportation) ("the Statute") directs us to determine that applicants for certificate authority to provide interstate and foreign charter air transportation of persons, property and mail are "fit, willing, and able" to perform such transportation and to ensure that all operations relating to this authority conform to the provisions of the Statute and the regulations and requirements of the Department. 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 company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing an undue risk to consumers, and (3) will comply with the Statute and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen.

Application

UAL Corporation (UAL), the parent company of United Airlines, Inc. (United), has decided to enter the "business jet" market. To implement its plans, UAL has established three subsidiary companies--Biz Jet Services, Inc. (Biz Jet), Biz Jet Charter, Inc. (Charter), and Biz Jet Fractional, Inc. (Fractional).¹ Each of these entities will provide separate, though complementary, flight services. Biz Jet and Charter will provide corporate shuttle and charter services using executive configured aircraft.² Fractional will offer individuals and businesses the opportunity to participate in the fractional ownership of business jets.³

On June 8, 2001, Biz Jet filed applications in Dockets OST-01-9880 and OST-01-9881 requesting certificates issued under 49 U.S.C. 41102 authorizing it to provide interstate and foreign charter air transportation of persons, property, and mail.⁴ Biz Jet accompanied its applications with information required by section 204.3 of our regulations for an examination of its fitness to hold such authority.⁵

Objection

On June 29, the Association of Flight Attendants, AFL-CIO (AFA),⁶ filed an answer opposing the applications of Biz Jet.⁷ AFA does not specifically question the fitness or citizenship of Biz Jet. Rather, AFA argues that UAL's business jet operations must abide by the collective bargaining agreement between AFA and United. Thus, AFA contends, absent a waiver, any operations by the UAL business jet companies, including the applicant, must be conducted using flight attendants from the United Airlines System Seniority List (Seniority List). AFA states that UAL has not committed to using flight attendants from the Seniority List nor has it taken steps to obtain a waiver from AFA. AFA argues that the Department should require

¹ Biz Jet, Charter, and Fractional are wholly owned subsidiaries of Biz Jet Holdings, Inc. (Holdings) which, in turn, is a wholly owned subsidiary of UAL.

² Biz Jet will use aircraft operated under Part 121 of the Federal Aviation Regulations (FARs); Charter will use aircraft operated under Part 135 of the FARs.

³ "Fractional ownership" refers to aircraft operations where multiple parties buy shares in one or more fractional ownership program aircraft and enter into contracts with a common management company to provide aircraft management services to the owners, including maintaining the aircraft, providing flight crews if needed, and coordinating the dry lease exchange of the program aircraft among the fractional owners.

⁴ Charter has registered as an air taxi operator under Part 298 of our rules. The services proposed by Fractional require no economic authority from the Department. Although not at issue in this proceeding, we note that, should Charter desire to operate service under 14 CFR Part 298 between the same two points more than four times per week according to a published schedule, it must first be found fit as a commuter carrier.

⁵ Biz Jet supplemented its applications with additional information on June 26 and July 27.

⁶ AFA is the certified bargaining representative for the flight attendants employed by United.

⁷ We note that AFA filed its objection in Docket OST-01-9881 (foreign charter) but not in Docket OST-01-9880 (interstate charter). We have treated AFA's answer as an objection to both applications.

UAL to resolve this contract matter prior to issuing certificate authority to Biz Jet. AFA states that UAL's failure to resolve this matter could lead to a strike at United by its flight attendants, and that such a strike would cause a major disruption in the nation's air transportation system. Thus, AFA argues, it would not be in the public interest for the Department to grant Biz Jet the certificate authority it requests until such time as AFA's outstanding issues have been resolved.

In its reply filed on July 6, Biz Jet disagrees with AFA's interpretation that the collective bargaining agreement between AFA and United applies to the planned operations of Biz Jet. It further argues that the disputed issues are more appropriately addressed within the procedures provided by the Railway Labor Act (RLA)⁸. Moreover, Biz Jet notes that it has consistently been the position of the Department, and its predecessor, the Civil Aeronautics Board, that the fitness/certification process is not the proper forum for resolving labor disputes. Finally, Biz Jet states that its proposed services are in the public interest.⁹

It is clear from the record that there is a dispute over the relevant terms of the collective bargaining agreement. As Biz Jet correctly points out, we have been reluctant to allow our fitness and certification processes to be used as vehicles for resolving outstanding labor issues.¹⁰ AFA has not persuaded us that we should do so here. Congress has provided procedures for parties with labor grievances to use to resolve such issues. We believe that the concerns raised by AFA are more properly addressed by it using the resources and procedures available to it under the RLA or other established grievance resolution procedures.¹¹ We encourage it to do so.

We have received no other answers to the applications and no special issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of Biz Jet's fitness on the basis of the written record. As discussed below, we tentatively conclude that Biz Jet is fit, willing, and able to operate its proposed air service, subject to conditions. However, we will give interested persons an opportunity to show cause why we should not adopt as final these tentative findings and conclusions.

⁸ 45 U.S.C. 151 *et seq.*

⁹ In this connection, it states that its planned business jet services will inject a new competitor into the market for on-demand business jet services, thus providing the public with an increased range of price and service options, as well as additional jobs for U.S. workers.

¹⁰ *See*, for example, Orders 92-4-49 and 88-12-30.

¹¹ AFA's answer does not indicate whether the union has as yet pursued any of the dispute resolution processes available to it under the RLA. We do note, however, that AFA has provided no findings by the National Mediation Board or the courts showing that UAL, United, or the applicant have violated, or will violate, any provisions of the RLA or the AFA-United collective bargaining agreement.

FITNESS

The Applicant

Biz Jet, a non-operating company, was incorporated in the State of Delaware on April 26, 2001. It maintains its headquarters in Arlington Heights, Illinois. If granted the certificates it seeks, the applicant plans to use regional jets or other executive-configured aircraft to provide charter flights. It also plans to provide corporate shuttle services with aircraft owned by its customers. The applicant states that its services will be targeted at corporate and business travelers who require air transportation that is tailored to their particular needs.

Managerial Competence

The three Holdings subsidiaries--Biz Jet, Charter, and Fractional--intend to share the same directors and senior management personnel.¹² James E. Goodwin, who is the Chairman and Chief Executive Officer of UAL and United, will serve as Chairman of the three companies. The two other members of the Board of Directors are Stuart Oran, who is Biz Jet's President and Chief Executive Officer, and Douglas Hacker, who is Executive Vice President and Chief Financial Officer for United. The following personnel will hold senior management positions with the business jet subsidiaries:¹³

As noted above, Stuart Oran is the President and Chief Executive Officer of Biz Jet. Mr. Oran has held senior management positions with United since 1994, serving as Executive Vice President-Corporate Affairs (1994-1998) and Senior Vice President-International (1998-2001). Prior to joining United, Mr. Oran, who is a lawyer, was a partner with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison.

Biz Jet's Chief Operating Officer will be Thomas Davis. Mr. Davis's most recent employment was as President of DaimlerChrysler Aviation (formerly Chrysler Pentastar Aviation) which he joined as Vice President of Operations in 1987. He became that company's President in 1991. Prior to that, he was employed for sixteen years (1971-1987) at ANR Pipeline Company, first

¹² Although the operations of Biz Jet and the other business jet subsidiaries will be separate from one another, the three companies will share office space and related resources and facilities, including some common management and administrative staff personnel. Moreover, while separate from United, Biz Jet will avail itself as needed of United's operating capabilities and expertise in areas such as training, standardization, inspections, and quality assurance.

¹³ In addition to the individuals discussed above, Biz Jet has identified the following senior management personnel: J. Bruce Huffman, Senior Vice President-Customer Operations; W. Noell Michaels, Senior Vice President-Sales; Robert Beleson, Senior Vice President-Chief Marketing Officer; Christopher Lin, Senior Vice President-Business Development; E. Howard Hackney, Vice President-Operations and Business Development; Leslie Harper; Vice President-Human Resources; and Michael Szczechowski, Vice President-Operations. We have reviewed the background information provided for these individuals and believe them to be qualified for their positions.

as a pilot, then as Chief Pilot, and finally as Aviation Director. Mr. Davis holds an FAA Airline Transport Pilot license.

Donald Strench will serve as Senior Vice President-Finance and Administration, Chief Financial Officer and Treasurer for Biz Jet. Mr. Strench was employed by American Airlines as Manager/Principal-Corporate Development (1986-1988) and Director of Planning (1988-1993). He also served as Vice President-Corporate Development and Systems (1993-1996) for American Eagle. His most recent employment includes President of Transaction Partners, LLC, a consulting company (2000-2001) and Vice President-Corporate Development for ARNET Systems, Inc. (1996-2000).

The following individuals hold FAA-required key technical positions with Biz Jet:¹⁴

C. David Hobgood is the applicant's Vice President-Director of Safety. From 1989 to 1999, Mr. Hobgood served as the Manager of the FAA's Flight Standards District Office in Detroit, Michigan. After leaving the FAA in 1999, he became the Vice President-Flight Operations for Spirit Airlines where he worked until accepting his current position with Biz Jet. Mr. Hobgood holds Airline Transport Pilot and Flight Engineer licenses issued by the FAA.

The Vice President-Director of Operations for Biz Jet is Samuel McWilliams. Mr. McWilliams has been employed in various positions with United since joining the carrier as a pilot in 1986. Since 1988, he has held various positions with the United Flight Center¹⁵ including, most recently, Manager, Flight Operating Regions and Industry Liaison (1999-2001), Manager, Flight Standards and Operations Support (1996-1999), Manager, System Flight Operations (1993-1996), Manager, International Operations (1991-1993), Standards Captain (1991), and Training Check Airman (1988-1989). Prior to working for United, Mr. McWilliams was employed with Pan American World Airways from 1966-1986.¹⁶ Mr. McWilliams holds an FAA-issued Airline Transport Pilot license.

Wally Krutz is the applicant's Vice President-Director of Maintenance. Mr. Krutz joined United in 1967 as a line maintenance mechanic. Other positions he has held with the carrier include Manager, Maintenance Control (1995-2001), Manager-Line Processes and Work Drivers (1992-1995), Assistant to the San Francisco Maintenance Manager (1990-1992), Manager, System Aircraft Maintenance Planning and Control (1988-1990), and Staff Representative-Line Maintenance Planning (1986-1988). Mr. Krutz holds an FAA-issued Airframe and Powerplant Mechanic license.

¹⁴ Current plans call for these individuals to also oversee the FAR Part 91 operations conducted by Fractional, but have no responsibility for the operations of Charter, which will employ its own personnel to hold FAA-required positions.

¹⁵ The United Flight Center, located in Denver, Colorado, and is the training base for the majority of United's operations.

¹⁶ During this time, he served as Manager Flight Engineering/Training (1979-1984), Manager, Flight Engineering (1984-1986), and Check Airman (1975-1986).

Biz Jet's Chief Pilot is Gregory Kuethe. Mr. Kuethe holds an FAA-issued Airline Transport Pilot license and has over 8,300 total flight hours. From 1995 to 2001, he was Assistant Chief Pilot for DaimlerChrysler Aviation. Between 1987 and 1995, he was an instructor pilot with the Michigan Air National Guard. From 1981 to 1987, he was a flight examiner and instructor with the U.S. Air Force.

Kenneth Holder serves as Chief Inspector for Biz Jet. Mr. Holder has been employed in aircraft maintenance positions since 1984. From 1999 until joining the applicant in June of this year, he was assigned to represent United as a flight technician and inspector to the Orbis Flying Eye Hospital.¹⁷ His other positions with United have included Aircraft Maintenance Technician (1984-1985), Station Maintenance Controller (Los Angeles) (1985-1987), Supervisor-Aircraft Maintenance (Los Angeles) (1987-1997), and Operating Manager-Aircraft Maintenance Services (Los Angeles) (1997-1999). Mr. Holder holds an Airframe and Powerplant Mechanic license issued by the FAA.

In light of the experience and qualifications of the above individuals, plus the fact that the FAA also reviews the qualifications of an applicant's key technical personnel to hold their respective positions,¹⁸ we tentatively find that Biz Jet's management team is qualified to oversee its proposed passenger charter operations.

Operating Plan and Financial Position

If certificated, Biz Jet plans to commence operations with one leased 30-seat executive configured Embraer-135 business jet that it intends to use to conduct on-demand charter flights.¹⁹ The company anticipates that it will operate this aircraft approximately 1,250 hours during its first year. Biz Jet also anticipates that it may provide corporate shuttle services using several aircraft owned or leased by its customers, although the company has no specific plans to do so at present. Biz Jet expects that it will serve U.S. and foreign cities that have minimal or no nonstop commercial airline service.

The applicant has submitted a detailed listing of pre-operating and first-year expenses for the EMB-135 aircraft it proposes to lease. According to Biz Jet, these forecasts are based on information provided by prospective lessors or vendors as well as knowledge obtained from UAL's previous operating experience with United. In all, the applicant expects to incur approximately \$2.5 million in pre-operating expenses plus approximately \$8 million in

¹⁷ The Orbis Flying Eye Hospital is a non-profit organization that operates a DC-10 aircraft outfitted as a flying hospital/teaching facility.

¹⁸ Before authorizing a carrier to conduct air transportation operations, the FAA evaluates the carrier's Directors of Operations, Maintenance and Safety, Chief Pilot and Chief Inspector 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.

¹⁹ The applicant indicates that it may expand its fleet during the first year of operations, but has no specific plans to do so at this time. Moreover, Biz Jet anticipates that its operations will ultimately include the use of larger aircraft, such as the Boeing Business Jet, in the future.

operating expenses during its first year of operations. We have reviewed the forecast direct operating costs and believe them to be reasonable.

The applicant's operations will be funded by UAL. To this end, the Chief Financial Officer of UAL has provided a letter confirming that UAL will provide Biz Jet with an initial equity investment of \$4 million, and further committing to providing the applicant with whatever financial resources are needed to cover its start-up costs and any losses incurred through at least the first year of operations.²⁰ In support of UAL's ability to financially support Biz Jet, the applicant submitted Form 10-K reports filed by UAL with the Securities and Exchange Commission (SEC) for calendar years 1998, 1999 and 2000, as well as the 10-Q report filed with the SEC for the quarter ended March 31, 2001. We have also reviewed UAL's 10-Q report for the quarter ended June 30, 2001. These documents show that UAL had both operating and net profits during the three years ending December 31, 2000, but experienced operating and net losses during the six months ended June 30, 2001.²¹ At June 30, 2001, UAL had approximately \$1.28 billion in cash and short-term investments, negative working capital of \$3.6 billion (for a current assets to current liabilities ratio of 0.54 to 1),²² total assets of \$24.9 billion, \$1.27 billion in positive retained earnings, and \$4.71 billion in positive stockholders' equity. We also note that UAL has credit facilities in excess of \$1 billion.

In light of the above, we tentatively conclude that Biz Jet has developed a reasonable operating plan and that it will have access to sufficient financial resources to commence its operations without posing an undue risk to consumers or their funds.²³ We note, however, that our tentative finding here is predicated on the applicant's close relationship to UAL and UAL's commitment to provide resources to Biz Jet. Were Biz Jet to cease to be a subsidiary of UAL, and thus not have the benefit of UAL's financial resources, it is not clear that our fitness finding here would remain valid. Therefore, if the applicant is found fit and issued its certificate, we intend to condition any authority awarded Biz Jet on its continued existence as a wholly owned subsidiary of UAL. Moreover, while the applicant indicates that it may choose

²⁰ Recent documents filed with the Securities and Exchange Commission indicate that UAL has committed to providing up to \$250 million in support of all of its business jet operations.

²¹ UAL had operating and net profits, respectively, of \$654 million and \$50 million on revenues of \$19.3 billion for calendar year 2000; \$1.3 billion and \$1.2 billion on revenues of \$18.0 billion for calendar year 1999; and \$1.4 billion and \$821 million on revenues of \$17.5 billion in calendar year 1998. For the six months ended June 30, 2001, UAL had operating and net losses of \$860 million and \$678 million, respectively, on \$9.0 billion in revenues. UAL attributes its recent losses in large part to the recent downturn in the national economy.

²² Approximately \$1.8 billion of the company's \$8.1 billion in current liabilities are accrued traffic liabilities. Excluding these liabilities, UAL's negative working capital is \$1.7 billion, and its current assets to current liabilities ratio is 0.71 to 1.

²³ In establishing financial fitness, the Department typically asks an applicant for certificate authority to demonstrate that it has 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. In determining available resources, projected revenues may not be included. In BizJet's case, it would need approximately \$4.5 million to meet our financial test.

to use "large" aircraft²⁴ in the future, the service proposal provided here does not cover the operation of such aircraft. Thus, as is our practice, we will also limit any authority awarded Biz Jet to the operation of "small" aircraft.

Compliance Disposition

The applicant states that there are no actions or outstanding judgments against it, Holdings, or the company's key personnel, and that none of these parties have been the subject of any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations, or other legal action during the past ten years. Moreover, there is nothing in the compliance history of UAL or United that leads us to conclude that Biz Jet will not perform its operations in a satisfactory manner. Finally, we have been advised by the FAA that that agency is working with Biz Jet in connection with the applicant's efforts to obtain operating authority from the FAA for its proposed services. The FAA further advises that it knows of no reason why we should not find Biz Jet fit.

Based on the above, we tentatively find that Biz Jet will have the proper regard for the laws and regulations governing its service to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

CITIZENSHIP

49 U.S.C. 41102 requires that certificates 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 specifies 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.

We have previously found United Airlines, a wholly owned subsidiary of UAL, to be a citizen of the United States. Biz Jet is a wholly owned subsidiary of Biz Jet Holdings, Inc., which, in turn, is a wholly owned subsidiary of UAL, a publicly traded company.²⁵ The applicant states that all of its directors and key management personnel are U.S. citizens, and it has also submitted an affidavit attesting that it is a U.S. citizen. Finally, there is no other information before us that would lead us to conclude that Biz Jet is not controlled by U.S. citizens.

In view of the foregoing, we tentatively conclude that Biz Jet is a U.S. citizen and that it is fit, willing, and able to provide air transportation services as a certificated air carrier.

²⁴ Large aircraft are aircraft designed to have a passenger capacity of more than 60 seats or a maximum payload capacity of greater than 18,000 pounds.

²⁵ Approximately 55 percent of UAL's voting stock is held by employees of United Airlines.

PUBLIC CONVENIENCE AND NECESSITY

No finding of consistency with the public convenience and necessity is required for the award of authority for interstate charter air transportation of persons, property, and mail under section 41102, although such a finding is required for authority to engage in foreign charter air transportation.

We tentatively find that the foreign charter air transportation proposed by Biz Jet is consistent with the public convenience and necessity. By Order 78-7-106, which instituted the *Former Large Irregular Air Service Investigation*, the Civil Aeronautics Board found that there was a continuing demand and need for additional charter air carriers. These findings remain valid and apply to the authority sought by Biz Jet. Therefore, if Biz Jet meets the fitness requirements of the Statute, it will receive certificates authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail under section 41102.²⁶

REQUEST FOR CONFIDENTIAL TREATMENT

By letter dated July 13, 2001, the Department requested Biz Jet to provide additional information relative to its application. On July 27, 2001, Biz Jet requested confidential treatment under section 302.12 of our rules for two of its responses to that letter that related to the applicant's aircraft plans and to credit facilities available to UAL. In support of its request, Biz Jet states that the information is commercially sensitive and warrants confidential treatment by the Department.

Rule 12 instructs us to evaluate requests for confidential treatment in accordance with the standards of disclosure found in the Freedom of Information Act (5 U.S.C. section 552). Information may be withheld from disclosure under 5 U.S.C. 552(b)(4) if it is (1) commercial or financial, (2) obtained from a person outside of government, and (3) privileged or confidential.²⁷

There is no question that the information for which Biz Jet seeks confidential treatment is financial or commercial in nature and that it was obtained from a person outside the government. The remaining question is whether the information is privileged or confidential--whether "disclosure of the information is likely to have either of the following effects: (1) impair the Government's ability to obtain necessary information; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained."²⁸ Further, to be privileged or confidential, the information must not be of the type that is usually released to the public.²⁹

²⁶ Pursuant to 49 U.S.C. 41307, issuance of foreign authority to the applicant is subject to Presidential review.

²⁷ See *Gulf and Western Industries, Inc. v. United States*, 615 F.2d 527, 529 (D.C. Cir. 1979).

²⁸ See *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

²⁹ See *Gulf and Western Industries, Inc. v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979).

We note that the information for which the applicant seeks confidential treatment is of a level of detail beyond that typically required by the Department or provided by carrier-applicants in fitness cases, and is similar to information for which we have provided confidential treatment in the past when asked to do so. Thus, we will grant Biz Jet's request for confidential treatment of these exhibits.

OBJECTIONS

We will give interested persons 14 calendar 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 calendar days thereafter. We expect such persons to direct their objections, if any, to the applications and points at issue and to support such objections with detailed economic analyses.³⁰ We will not entertain general, vague, or unsupported objections. If no substantial objections are filed, we will issue orders that will make final our tentative findings and conclusions with respect to certification and fitness and will issue Biz Jet certificates that will contain an exact copy of the attached Terms, Conditions, and Limitations.

EFFECTIVE CERTIFICATE CONDITIONS AND LIMITATIONS

If Biz Jet is found fit and issued the certificates it seeks, its authority will not become effective until the carrier has fulfilled all of the requirements for effectiveness as set forth in the terms and conditions attached to its certificates. Among other things, this includes our receipt of evidence from the FAA demonstrating that Biz Jet has received authority from that agency to conduct passenger charter air transportation under Part 121 of the Federal Aviation Regulations, evidence that Biz Jet has obtained liability insurance coverage meeting the requirements of Part 205 of our rules, and a statement demonstrating that Biz Jet has undergone no other changes in its ownership, management, operations, finances, or compliance posture that would alter our finding of fitness for the company.

Furthermore, we remind Biz Jet 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 certificated 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. Moreover, as noted earlier, we will (1) limit any authority granted to Biz Jet to the operation of "small" aircraft and (2) require Biz Jet to continue to be a subsidiary of UAL. Furthermore, should

³⁰ If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*see* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

Biz Jet propose other substantial changes in areas relating to its fitness, it must first comply with the requirements of section 204.5 of our rules.³¹ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under 49 U.S.C. 41110(e).³²

Moreover, to aid the Department in monitoring the fitness of new air carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report to the Air Carrier Fitness Division within 45 days following the end of the first year of actual flight operations. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,³³ and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue orders making final our tentative findings and conclusions stated above and award certificates to Biz Jet Services, Inc., authorizing it to engage in interstate and foreign charter air transportation of persons, property and mail, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of orders making final any of the proposed findings, conclusions, or the certificate awards set forth here to file such objections with the Department of Transportation Dockets, 400 Seventh Street, S.W., Washington, D.C. 20590, in Dockets OST-01-9880 and OST-01-9881, and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.

³¹ Biz Jet may contact our Air Carrier Fitness Division to report proposed substantial changes and determine what additional information, if any, will be required under section 204.5. If the company 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 certificate authority.

³² We also remind Biz Jet about the requirements of section 204.7 of our rules. This section provides, among other things, that: (1) the certificate 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 the operations for which it was found fit and subsequently ceases such operations for any reason, it may not resume certificated 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.

³³ These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations and a 12-month income statement ending that same date.

3. We grant the Motion for Confidential Treatment filed by Biz Jet Services, Inc., on July 27, 2001.
4. 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.
5. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter orders making final our tentative findings and conclusions and will issue Biz Jet Services, Inc., certificates that will contain exact copies of the attached specimen Terms, Conditions, and Limitations.³⁴
6. We will serve a copy of this order on the persons listed in Attachment A.
7. We will publish a notice 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>*

³⁴ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



Specimen
Terms, Conditions, and Limitations

BIZ JET SERVICES, INC.

is authorized to engage in interstate charter 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 authority to operate under this certificate 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), issue tickets for the operations proposed under this certificate, or enter into contracts with charter operators, and any advertisement by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The effectiveness of the authority contained in this certificate is conditioned upon the holder's continuing existence as a wholly owned subsidiary of UAL Corporation.

- (4) *The operations authorized by this certificate are restricted to those performed with aircraft designed to have a maximum passenger capacity of 60 seats or a maximum payload capacity of 18,000 pounds.*
- (5) *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.*
- (6) *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.*
- (7) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (8) *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.*
- (9) *The holder is not authorized to engage in air transportation operations between points within the State of Alaska.*
- (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 under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held 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.*



Specimen
Terms, Conditions, and Limitations

BIZ JET SERVICES, INC.

is authorized to engage in foreign charter air transportation of persons, property, and mail:

Between any place in the United States and any place outside thereof.

This authority is subject to the following provisions:

(1) The authority to operate under this certificate 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), issue tickets for the operations proposed under this certificate, or enter into contracts with charter operators, and any advertisement by the holder must prominently state: "This service is subject to receipt of government operating authority."

- (3) *The effectiveness of the authority contained in this certificate is conditioned upon the holder's continuing existence as a wholly owned subsidiary of UAL Corporation.*
- (4) *The operations authorized by this certificate are restricted to those performed with aircraft designed to have a maximum passenger capacity of 60 seats or a maximum payload capacity of 18,000 pounds.*
- (5) *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.*
- (6) *The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.*
- (7) *The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.*
- (8) *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.*
- (9) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (10) *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.*
- (11) *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.*

(12) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held 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.

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