

Order 99-6-18

Served: June 23, 1999



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

Issued by the Department of Transportation
on the 22nd day of June, 1999

Applications of

LORAIR, LTD.

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-95-290
OST-95-702**

Application of

LORAIR, LTD.

for a waiver of the revocation-for-dormancy provisions of
14 CFR 204.7

Docket OST-98-4164

**ORDER CONFIRMING ORAL ACTION AND
REISSUING EFFECTIVE CERTIFICATES**

Summary

By this order we confirm our oral action of June 2, 1999, authorizing LorAir, Ltd., to institute charter air transportation following a period of dormancy, and reissue the certificates of public convenience and necessity issued to LorAir, Ltd., by Order 97-7-20, authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail.

Background

Section 204.7 of our rules (14 CFR 204.7) provides, among other things, that a company's air carrier authority will be revoked for dormancy if, within one year of having been found fit, it has not instituted the air transportation operations authorized by that authority.

By Orders 95-11-29, served November 17, 1995, and 95-12-24, served December 21, 1995, we issued to LorAir, Ltd., of Tucson, Arizona, certificates of public convenience and necessity authorizing it to engage in interstate and foreign charter air transportation in accordance with 49 U.S.C. 41102. On October 3, 1996, LorAir requested a waiver of the revocation-for-dormancy provisions of section 204.7, explaining that a change in ownership and problems with aircraft availability had delayed its progress toward becoming operational. Ultimately, LorAir was granted three extensions before completing its FAA certification and having its certificate authority made effective by Order 97-7-20 on July 23, 1997.

Nine months later, we learned from the FAA that LorAir had never instituted the operations for which it was found fit and issued effective certificate authority. On April 24, 1998, we reminded the carrier that, in accordance with section 204.7 of our rules (14 CFR 204.7), if it did not commence its certificated operations within one year of having last been found fit, *i.e.*, by July 23, 1998, its certificate authority would be revoked for dormancy.

On July 23, 1998, LorAir filed, in Docket OST-98-4164, a request for a waiver of the revocation-for-dormancy provisions of section 204.7 along with updated financial fitness information and a résumé for its new Director of Maintenance. LorAir said that, otherwise, there had been no changes in key personnel and no changes in ownership or operational plans. LorAir further stated that no pre-operating expenses remained to be paid, and its owners, Walter L. and Dennese P. Cole, provided an affidavit that they were able to and would make available to LorAir an additional \$600,000 to serve as a working capital reserve. The carrier also filed an unaudited income statement for the period January 1 through July 15, 1998, and a balance sheet dated as of July 15, 1998. These documents indicated that LorAir had produced a net income of \$337,645 during the six-and-one-half-month period, derived principally from aircraft lease revenue. Its July 15 balance sheet showed current assets of \$368,110, current liabilities of \$235,459 (yielding working capital of \$132,651 and a current ratio of 1.56 to 1), long-term debt of \$321,000, and a stockholders' deficit of \$32,100.

LorAir further declared that the aircraft it proposed to utilize, a B-737, was currently leased to another air carrier until October 1. Allowing for an additional 30 days for a maintenance check, LorAir expected that the aircraft would be ready to operate on or about November 1. To allow for unanticipated problems, the carrier asked the Department to grant it a waiver from the dormancy rule until December 1.

By letter dated August 10, 1998, we granted LorAir's request for an extension in two segments. We authorized an extension of 75 days (through October 6), by which time LorAir would have to provide evidence that the aircraft had been returned by the lessee and had begun the required maintenance. If that milestone was satisfactorily reached, we would grant the company the full requested extension, until December 1, to actually become operational. On October 1, LorAir

notified us that the B-737 had been returned and was currently undergoing maintenance. Therefore, by letter dated October 5, we granted the carrier the balance of the extension requested.

LorAir subsequently requested several additional extensions, which we granted, due to unanticipated delays it encountered in completing its FAA certification. On May 26, LorAir's FAA Principal Operations Inspector verified that the carrier had satisfactorily completed its certification and that its FAA Operations Specifications would be signed and delivered to the carrier that week. On May 27, we received an OST Form 6410 evidencing that LorAir possessed liability insurance coverage in accordance with Part 205 of our regulations.

Fitness-Related Changes

On June 1, LorAir confirmed that it had completed its FAA certification and provided additional updated fitness information, including résumés on certain new key personnel, and financial statements current as of March 31, 1999.

Ownership and Management. LorAir continues to be owned by Mr. Walter L. Cole and Ms. Dennese P. Cole. Mr. Cole also serves as the company's President and General Manager.¹

LorAir's Director of Operations is Mr. Ralph E. Oursler, Jr. He holds an Airline Transport Pilot Certificate from the FAA. Prior to joining LorAir, Mr. Oursler was employed for over 30 years in the airline industry, including 25 years as a pilot for Eastern Air Lines, four years as a pilot, Chief Pilot, Director of Flight Standards, and Director of Operations for Viscount Air Services, and for last four years as a pilot for Pan American World Airways in Miami, Nordic European Airlines in Stockholm, and Tradewinds Airlines in Greensboro, North Carolina.

Mr. A. A. (Fred) Jaskewicz has accepted the position of Chief Pilot with LorAir. He has an Airline Transport Pilot Certificate with a type rating on the B-737 aircraft, and has logged over 14,000 hours of flight time. Mr. Jaskewicz previously was employed for over 30 years as a pilot with Eastern Air Lines, Viscount Air Services, AccessAir, and Tradewinds Airlines.

Mr. Ronald D. Hamilton, LorAir's Director of Maintenance, has spent 20 years in rotorcraft and fixed-wing aircraft maintenance. He came to LorAir from Viscount Air Services, where he was Senior Maintenance Controller. Previously, he was employed as an avionics mechanic with Western Airlines/Delta Air Lines and as a B-747 airframe structural mechanic with Northrop Aircraft Corporation. He holds an FAA-issued Airframe and Powerplant Mechanic Certificate.

Mr. Kenneth J. Piekut is LorAir's Director of Safety. He holds an FAA Commercial Pilot license in addition to licenses as a Certified Flight Instructor and Aircraft Dispatcher. His ten-year aviation career has been spent as a dispatcher with several certificated charter air carriers, and as a flight instructor and photo pilot with various flight schools.

¹ The background and qualifications of Mr. and Mrs. Cole, as well as those of Mr. Walter Hargreaves, the Chief Inspector, were discussed in Order 97-7-20.

We have examined the employment histories of these individuals and have concluded that they have the experience and skills to perform the duties of their respective positions. In addition, we have been advised that the FAA has found that LorAir's key technical personnel meet the requirements set out for their positions in the Federal Aviation Regulations.

Financial Condition. Based on our review of LorAir's operating plan, we determined that the company would need access to resources of at least \$658,486 to meet our financial fitness criteria.² In its periodic requests for extensions of time to institute operations, LorAir repeatedly stated that there had been no changes in the operating plan it presented in its certificate application. However, since it has taken the carrier much longer than anticipated to actually institute operations, its pre-operating expenditures increased from \$108,486 to \$2,329,250 over the period 1996 to May 1999. LorAir states that over \$2 million of these expenses were covered by the revenue received during the three-year period from leasing the B-737 aircraft, and \$321,000 of these expenses were covered by a draw on the \$1 million letter-of-credit provided by Nine Lives Holdings, Inc., a company co-owned by the Coles that owns the B-737 aircraft.

LorAir furnished unaudited financial statements as of May 31, 1999, and for the period January through May 1999. LorAir's income statement showed that, during that period, the company had a net loss of \$172,761 on revenues of \$256,000. Its balance sheet reflected current assets of \$264,409, current liabilities of \$221,583 (yielding working capital of \$42,826 and a current ratio of 1.19 to 1), long-term debt of \$321,000, and a stockholders' deficit of \$61,926. The long-term debt represents the draw on the Nine Lives credit facility.

Thus, to finance the start-up of operations, LorAir has access to the approximately \$680,000 balance in the Nine Lives Credit Facility. In addition, the carrier filed copies of the Coles' personal statement of financial condition dated December 31, 1998. This document indicates that, on that date, the Coles had a net worth of \$8.2 million, including cash balances of \$715,530. Approximately 72 percent of the value of their reported assets consists of their investments in LorAir, Nine Lives Holdings, Inc., and Turbo Aire Holdings, Inc., the owner of the maintenance base leased by LorAir.

In view of LorAir's small but positive working capital, the available balance on the letter-of-credit, and the stated willingness and ability of the Coles to financially support its operations to the extent of \$600,000, we conclude that LorAir will have sufficient financial resources available to institute its passenger charter operations without posing an undue risk to consumers or their funds.

Compliance and Safety. We have reviewed the records of the Department, including the FAA, with respect to the compliance disposition and safety record of LorAir's key personnel. The only item discovered was an enforcement action taken in August 1994 against LorAir's new Director

² This amount was composed of \$108,486 for pre-operating costs and \$550,000 to serve as a working capital reserve equal to one-quarter of the operating expenses expected to be incurred during its first year of certificated operations.

of Maintenance, Mr. Ronald D. Hamilton, while he was employed as a mechanic with Delta Air Lines. Mr. Hamilton's Airframe and Powerplant Mechanic Certificate was revoked for allegedly having engaged in careless or reckless actions. He was later recertified and his A&P Certificate was reissued in January 1998. LorAir's FAA Principal Maintenance Inspector has confirmed that Mr. Hamilton is experienced and knowledgeable in his field and that the FAA is satisfied that he is qualified to serve as the carrier's Director of Maintenance.

In light of these considerations, we continue to conclude that LorAir and its key personnel possess a positive disposition to comply with the laws and rules applicable to the proposed air charter operations.

Reissuance of Effective Certificates

We have examined the updated fitness information obtained from LorAir and other sources available to us and conclude that LorAir remains fit, willing, and able to engage in the proposed passenger charter service. We have received evidence of its certification by the FAA to conduct the proposed operations with one B-737 aircraft, and we have received a copy of an insurance certificate showing that the carrier possesses the liability insurance coverage mandated by our rules. Therefore, LorAir has completed all of the steps necessary for its certificates to be reissued and made effective. Since no other matters affecting LorAir's fitness have come to our attention, we made the carrier's certificate authority effective on June 2, 1999. We advised the carrier of this action on that date, which we confirm here. As a matter of administrative convenience, we are reissuing the carrier's certificates to reflect the effective date of the authority contained therein, June 2, 1999.

As detailed in Order 97-7-20, our conclusions with respect to LorAir's fitness are based on the one-aircraft passenger charter operating plan presented in its application, and might not apply if LorAir were to substantially expand its operations. Therefore, if the carrier proposes to employ more than two large aircraft in its charter operations, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to implementing service with any additional aircraft. Furthermore, should LorAir propose other substantial changes in its ownership, management, or operations, it must first comply with the

requirements of section 204.5 of our rules.³ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).⁴

To aid the Department in monitoring the fitness of new carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report, within 45 days following the end of the first year of actual flight operations, to the Air Carrier Fitness Division. 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,⁵ 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, acting under authority assigned by the Department in its Regulations, 14 CFR 385.12(a)(5)(i):

1. We reissue to LorAir, Ltd., the certificates of public convenience and necessity reissued to it by Order 97-7-20, authorizing it to engage in interstate and foreign charter air transportation of persons, property, and mail, in the attached form to reflect their effective date.
2. We confirm our oral action of June 2, 1999, making the certificate authority reissued to LorAir, Ltd., effective on that date.
3. We direct that, should LorAir, Ltd., propose to utilize more than two aircraft in its operations, it must notify the Department in writing at least 45 days in advance and demonstrate its fitness for such operations prior to placing the additional aircraft into service.
4. We direct LorAir, Ltd., to submit to the Air Carrier Fitness Division a first-year progress report, as described in this order, within 45 days following the end of its first year of actual flight operations.

³ LorAir 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. Moreover, 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 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.

⁴ We also remind LorAir about the requirements of section 204.7 of our rules. This section provides, among other things, that if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume certificated 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.

⁵ 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 twelve-month income statement ending that same day.

5. 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 confirmed in this order was effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

JOHN V. COLEMAN
Director
Office of Aviation Analysis

(SEAL)

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



**Certificate of Public Convenience and Necessity
for
Interstate Charter Air Transportation**

(As Reissued)

This Certifies That

LORAIR, LTD.

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 charter 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 99-6-18
On June 22, 1999
Effective on June 2, 1999*

*John V. Coleman
Director
Office of Aviation Analysis*

Attachment

*Reissued by
Order 99-6-18



Terms, Conditions, and Limitations

LORAIR, LTD.

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 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 under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.*
- (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 is not authorized to engage in air transportation between points within the State of Alaska.*

**This certificate is being reissued to reflect the effective date of the authority contained therein.*

(6) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(7) 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 not 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.



**Certificate of Public Convenience and Necessity
for
Foreign Charter Air Transportation**

(As Reissued)

This Certifies That

LORAIR, LTD.

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 foreign charter 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 99-6-18
On June 22, 1999
Effective on June 2, 1999*

*John V. Coleman
Director
Office of Aviation Analysis*

Attachment

*Reissued by
Order 99-6-18



Terms, Conditions, and Limitations

LORAIR, LTD.

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 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 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.*
- (3) 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.*
- (4) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.*
- (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 of the authority contained therein.*

(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) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), 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 not 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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