

Order 99-5-11

Served: May 25, 1999



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

Issued by the Department of Transportation
on the 25th day of May, 1999

Application of

NATIONAL AIRLINES, INC.

for a certificate of public convenience and necessity under 49 U.S.C. 41102 to engage in interstate scheduled air transportation of persons, property and mail

Docket OST-98-4538

Application of

NATIONAL AIRLINES, INC.

for a waiver of the provisions of section 201.5 of the Department's regulations

Docket OST-99-5506

**ORDER CONFIRMING ORAL ACTIONS AND
ISSUING EFFECTIVE CERTIFICATE**

Summary

By this order, we (1) confirm our oral actions granting National Airlines, Inc., a waiver of certain pre-operational sales prohibitions in 14 CFR 201.5, and of the six-day waiting period before its certificate authority could be made effective, as prescribed in Order 99-2-10; and (2) reissue National's section 41102 interstate scheduled passenger certificate to reflect the effective date of the authority contained therein.

Background

By Order 99-2-10, served February 11, 1999, the Department found National Airlines, Inc., to be fit, willing, and able to conduct interstate scheduled passenger air transportation under section

41102 of Title 49 of the United States Code (“the Statute”) and issued a certificate authorizing it to engage in such operations.

The certificate contained the usual condition that it would not become effective until the sixth (business) day after we had received the appropriate FAA documents reflecting the carrier’s operating authority, a certificate of insurance on OST Form 6410 showing that it had insurance coverage meeting the requirements of Part 205 of our rules, and a statement describing any changes it had undergone in its ownership, key personnel, operating plans, financial posture, or compliance history since the date of Show Cause Order 99-1-13 in this case, unless a stay was issued prior to that date.

On February 22, 1999, we received the required certificate of insurance on OST Form 6410 evidencing that National possesses liability insurance coverage, effective February 9, 1999, as prescribed by Part 205 of our regulations.

Request for Waiver

On April 6, National filed in Docket OST-99-5506 a request for a waiver of the provisions of section 201.5 of our regulations to the extent necessary to authorize it to sell tickets and receive payments beginning April 19.¹ In support of this request, National stated that it expected to have completed its FAA certification and be ready to commence flight operations on May 27. Also on April 6, National’s FAA Certificate Program Manager advised the Department that, if the certification continued satisfactorily, the carrier’s FAA certificate could be issued in approximately seven to eight weeks (*i.e.*, between May 25 and June 1).

To safeguard passenger funds, National stated that it had agreed to enter into irrevocable escrow agreements with financial institutions to hold ticket payments prior to the institution of revenue operations. Furthermore, the carrier declared that it would advise its customers that it did not yet possess full authority to provide the advertised flights, that customers could obtain full ticket price refunds, and that, if National did not receive its final certification in time to perform the advertised flights, it would assist customers to obtain alternate transportation.

On April 13-15, National reiterated these pledges and filed copies of its two pre-operational sales escrow agreements, information on ownership and personnel changes made since its fitness was examined, and updated financial statements, including an accounting of pre-operating expenses and working capital.²

Changes since Fitness Review

¹ With the issuance of a final fitness determination (Order 99-2-10), National was authorized by section 201.5 to advertise its services, list schedules, and take reservations as long as all advertisements and schedule listings prominently stated that performance of the advertised service was “subject to the receipt of government operating authority.”

² Certain of these documents were updated again on May 18 and 20.

National states that the expected merger between Harrah's Entertainment, Inc. ("Harrah's", parent of Harrah's Operating Company, Inc. ("HOC")) and Rio Hotel & Casino, Inc., was completed on December 31, 1998. In accordance with the merger agreement, Harrah's became the beneficial owner of HOC's and Rio's combined 47.8 percent ownership interest in National. Under the terms of the shareholder agreement between Harrah's and Rio, the post-merger voting power exercisable by Harrah's with respect to National's stock is limited to 25 percent of the total shares outstanding.

The carrier also provided information on several changes in key personnel. Mr. Hector Mon, President of Harrah's Nevada, resigned from National's board of directors and was replaced by Mr. Gary Loveman, Executive Vice President and Chief Operating Officer of Harrah's Entertainment, Inc. In addition, Mr. Frank Thompson Milligan, who has spent the last 33 years in marketing analysis and senior sales positions with Boeing, has joined National as Senior Vice President-Aircraft Acquisitions. The carrier further reported that Mr. David E. Giles has been engaged as Director of Maintenance, replacing Mr. Thomas A. Jasperson, who has been redesignated Director of Quality Assurance/Chief Inspector.³ We have examined the background statements for the new personnel and conclude that they possess the necessary qualifications to carry out their respective functions for National.

National also filed audited financial statements covering the first 44 months of its developmental period, from April 1995 to December 1998, and unaudited statements showing the company's actual and projected pre-operating costs and financial condition through the first five months of 1999. These documents note that National has entered into agreements for the lease of four B-757 aircraft with an average lease payment per aircraft approximately \$20,000 higher per month than previously projected. They also reveal that the carrier expects to have expended approximately \$5.1 million more for pre-operational needs than originally budgeted, resulting in a corresponding shortfall in anticipated working capital available at the time of proposed start-up in late May.

According to our calculation of National's financial fitness in Order 99-1-13, to support operations in the first year with eight aircraft, the carrier needed at least \$39.2 million in available funds to cover a projected \$9.3 million in remaining pre-operating costs and an estimated \$29.9 million to serve as a working capital reserve equal to one-quarter of the first year's estimated operating expenses. However, National's latest revised projection (as of May 20) indicates that by May 31, it will have expended a total of approximately \$18.7 million for pre-operating needs (\$5.1 million more than the \$13.6 million originally projected), leaving it with approximately \$27.2 million in cash and \$24.3 million in working capital to fulfill the Department's working capital reserve test.

³ Mr. Giles has worked for the past 16 years for America West Airlines in positions ranging from aircraft mechanic to aircraft maintenance shift manager. He holds an Airframe and Powerplant Mechanic Certificate issued by the FAA. Mr. Jasperson's qualifications were examined previously in this proceeding (*see* Order 99-1-13, footnote 5).

In view of these changes in the company's financial condition, we recalculated the fleet size that National could support. Drawing upon the company's own operating cost estimates for fleets of varying sizes and taking into consideration increased aircraft rental costs and making allowances for probable increases in fuel costs, our analysis determined that a working capital reserve of approximately \$24.5 million would enable National to meet our financial fitness criteria for first-year certificated operations with up to six aircraft. Therefore, we will direct the carrier to notify the Department at least 45 days in advance if it plans to utilize more than six aircraft in its certificated operations.

Waiver Conditions

National provided a copy of a proposed irrevocable escrow agreement with Nevada State Bank in Las Vegas, and a copy of a proposed credit card agreement with U.S. Bank National Association located in Minneapolis, Minnesota, which institutions will serve as depositories for cash and credit card payments received for future National flights until the carrier begins revenue service. We have examined these documents and find them to be in order.

In addition, National pledged to meet additional conditions required by the Department to protect passengers funds. Specifically, National agreed to prominently include a statement in its advertising and schedule listings that the proposed service was subject to receipt of government operating authority. It also agreed that ticket purchasers would be advised prior to purchase that National did not yet have effective authority to operate the services for which the ticket was issued, that customers were entitled to a full refund, without penalty, upon request, and to the cancellation of their reservations at any time prior to National's startup of revenue operations. National further consented that, if it was unable to commence revenue operations by the date of the flights for which tickets were purchased, customers would have the choice of accepting a full refund or substitute air transportation to be arranged for and paid in full by National. If substitute air transportation could not be obtained, National agreed that it would compensate affected passengers by paying them 200 percent of the ticket price paid, inclusive of the refund.

In view of National's acceptance of the conditions prescribed by the Department, its demonstration of continuing fitness, and affirmation by the FAA of the carrier's satisfactory progress toward certification, we orally granted National's request for a waiver of the pre-operational sales prohibitions of section 201.5, effective April 16, 1999, which we confirm here.

Issuance of Effective Certificate

On May 18, National provided a statement that it had not undergone any substantial changes in fitness related areas since those it reported in April, and included its latest financial statements. The carrier further declared that it expected its FAA Certificate and Operations Specifications to be issued on May 20, and, with the submission of those documents to the Department, National would have completed all of the steps necessary for its certificate to be made effective. Under these circumstances, National requested that the Department waive the usual six (business) day waiting period to the extent necessary to allow it to institute operations no later than May 27.

On May 20, we received a copy of National's FAA Air Carrier Certificate and Operations Specifications authorizing it to engage in scheduled passenger air service, which will begin initially

with two B-757 aircraft. After reviewing these documents, we find them to be satisfactory and in consonance with the economic authority granted National in Order 99-2-10.

Inasmuch as the carrier has satisfied the requirements for effective authority enumerated in the terms, conditions, and limitations attached to its certificate, and since no new issues regarding its fitness have arisen, we orally granted National's request and allowed its certificate authority to become effective on May 21, 1999. We confirm that action here and reissue to National its Certificate and attached Terms, Conditions, and Limitations, to reflect the effective date of that authority.

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,⁴ 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 National Airlines, Inc., the certificate of public convenience and necessity issued to it by Order 99-2-10, in the attached form to reflect its effective date.
2. We confirm our oral action of April 16, 1999, granting National Airlines, Inc., a waiver of the pre-operational ticket sales prohibitions of 14 CFR 201.5, subject to certain conditions, effective April 16, 1999.
3. We confirm our oral action of May 20, 1999, granting National Airlines, Inc., a waiver of the six-day waiting period stipulated in Order 99-2-10, and making its certificate effective on May 21, 1999.
4. We direct that, should National Airlines, Inc., propose to utilize more than six 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 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 direct National Airlines, Inc., 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.⁵

6. 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*

⁵ 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, and a listing of current senior management and key technical personnel.



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

(as reissued)

This Certifies That

NATIONAL AIRLINES, INC.

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 99-5-11
On May 25, 1999
Effective on May 21, 1999**

**John V. Coleman
Director
Office of Aviation Analysis**



Terms, Conditions, and Limitations

NATIONAL AIRLINES, INC.

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 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 may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

*This certificate is being reissued to reflect the effective date.

(6) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(7) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(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 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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