



Posted: 5/26/99
12:00 p.m.

Order 99-5-14

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 April, 1999

Served: May 26, 1999

In the matter of

CERTAIN FOREIGN AIR CARRIERS

foreign air carrier permits and exemptions under
49 U.S.C. §41301 and §40109

Docket OST-98-4531

Applications of

CERTAIN FOREIGN AIR CARRIERS

for renewal and/or amendment of foreign air carrier
permits and exemptions under 49 U.S.C. §41301 and
§40109

FINAL ORDER

Summary

By this order we are finalizing our tentative findings and conclusions in Order 98-10-3 with respect to the foreign air carriers listed in the Appendix to this order, and terminating the indicated foreign air carrier permits and exemptions held by those carriers. We are taking this action because these carriers have not met the statutory requirements of the Foreign Air Carrier Family Support Act of 1997, 49 U.S.C. 41313.

Background

As discussed in detail in Order 98-10-3, on December 16, 1997, the President signed into law the Foreign Air Carrier Family Support Act of 1997 (Act).¹ The Act added a new section 41313 to Subtitle VII of Title 49 of the United States Code, providing that, effective on the 180th day following the date of enactment of the Act:

A foreign air carrier providing foreign air transportation under this chapter shall transmit to the Secretary of Transportation and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life. (Section 41313(b).)²

New section 41313(c) prescribed the specific contents of those plans. Since the Foreign Air Carrier Family Support Act was signed into law on December 16, 1997, plans were due to be filed not later than June 15, 1998. The vast majority of foreign air carriers filed their plans in a timely fashion; however, a number of carriers did not file.

Order to Show Cause

By Order 98-10-3, served October 1, 1998, we directed interested persons to show cause why we should not terminate the foreign air carrier permit and exemption authority held by 47 foreign air carriers that had, up to that date, failed to file the required family support plans.³ In that order, we noted our commitment to the successful implementation of the Foreign Air Carrier Family Support Act, in view of the significant benefits it accords the families of victims of aviation disasters. We stated that we had, to that end, made every effort to advise foreign air carriers of their obligations under the Act, and to assist them in meeting those obligations. Those efforts included sending several informational letters to the carriers, including a July 8, 1998 letter to the non-filing carriers from the Department's Assistant General Counsel for Aviation Enforcement and Proceedings, notifying them that they were in violation of the Act and that continued failure to file could result in enforcement action and the revocation of their authority to operate. Those efforts also included our contacting by telephone each non-filing foreign carrier, or its listed U.S. counsel or representative, to ascertain why the carrier had not filed and to offer assistance if the carrier had questions concerning its obligations under the Act.

¹ Public Law 105-148 (111 Stat. 2681).

² The law extended to foreign air carriers essentially the same requirements imposed on U.S. certificated air carriers by 49 U.S.C. §41113 under the Aviation Disaster Family Assistance Act of 1996.

³ At the time we issued Order 98-10-3, 205 of the 252 foreign carriers then licensed by the Department had filed their family support plans.

In Order 98-10-3, we tentatively found that the continued failure of the 47 non-filing foreign carriers to provide the required family support plans, particularly in the face of repeated advisories from the Department, constituted grounds for termination of those carriers' authority to serve the United States. We also noted that, during our efforts to contact these carriers, we had received information from the carriers' representatives or their homeland governments that the majority of them were no longer in business. We also stressed that our tentative action was without prejudice to the affected foreign carriers refile for Department authority, at such time as they were prepared to comply with all aspects of U.S. law, including the provisions of the Foreign Air Carrier Family Support Act.

Finally, we stated that in the event no objections were filed to the Order to Show Cause, all further procedural steps would be deemed waived, and the Department could enter an order which would (subject to Presidential review under §41307 of Title 49 of the U.S. Code, as appropriate) make final our tentative findings and conclusions set forth in that order.

Responsive Pleadings

Nine of the 47 foreign air carriers named in Order 98-10-3 filed responsive pleadings in Docket OST-98-4531. Aero Transcolombiana de Carga Ltda.; Translift Airways Limited d/b/a TransAer International Airlines; Nigeria Airways, Ltd.; and Garuda Indonesia each objected to our finalization of Order 98-10-3 as it pertained to its Department authority, each stating that it was contemporaneously filing the required family support plan. Jet Air International Charters, C.A.; Seagreen Air Transport Limited; and Transportes Aereos Bolivianos also objected, each stating that it would shortly file the required plan (each has now done so).

Kar-Air Oy stated that at the time it received its foreign air carrier permit it was an affiliate of Finnair Oy, which has also held Department economic authority for many years. It stated that the carriers have reorganized; that Kar-Air terminated its U.S. operations; and that, as a result, while Finnair filed a family support plan Kar-Air did not. It stated that, while it may question the basis for the Department's proposed action in Order 98-10-3, it has no objection to the termination of its foreign air carrier permit, so long as such action does not reflect adversely on it or its affiliates.

Cherokee Air Ltd. requested that, in order that it would be relieved of the requirement to file a family support plan, we amend its foreign air carrier permit to limit it to operations using only small aircraft. We will discuss Cherokee's application later in this order.

Decision

We have decided to finalize our tentative findings and conclusions in Order 98-10-3 with respect to the foreign air carriers listed in the Appendix to this order, and terminate the indicated foreign air carrier permits and exemptions held by those carriers.

Since the time we issued Order 98-10-3, twelve of the 47 foreign air carriers identified in that order have filed their plans in Docket OST 98-3304 and with the NTSB. Since these carriers have now filed their plans, we will not finalize our tentative findings and conclusions with respect to them, and their Department operating authority will remain unaffected by our action here. These twelve carriers, and their dates of filing, are:

1. Aero Transcolombiana de Carga Ltda. (Colombia), filed October 2, 1998;
2. Aeronautica de Cancun (Mexico), filed December 28, 1998;
3. Garuda Indonesia (Indonesia), filed October 21, 1998;
4. Jet Air International Charters, C.A. (Venezuela), filed November 9, 1998;
5. Nigeria Airways, Ltd. (Nigeria), filed October 5, 1998;
6. Seagreen Air Transport Limited (Antigua and Barbuda), filed October 29, 1998;
7. Sociedad Aeronautica de Medellin Consolidada (Colombia), filed January 20, 1999;
8. Transavia Airlines, C.V. (Netherlands), filed October 22, 1998;
9. Translift Airways Limited d/b/a TransAer International Airlines (Ireland), filed October 2, 1998;
10. Trans North Turbo Air Limited (Canada), filed October 13, 1998;
11. Transportes Aereos Bolivianos (Bolivia), filed November 20, 1998; and
12. Windward Islands Airways International N.V. (Netherlands Antilles), filed October 1, 1998.

Two other foreign air carriers identified in Order 98-10-3, Cherokee Air Ltd. (Bahamas), and North Cariboo Flying Service Limited (Canada), have, since the issuance of that order, requested and obtained Department authority to conduct operations using only small aircraft.⁴ They did so in order to qualify for the exemption we granted by Order 98-1-31, relieving those foreign air carriers which hold Department authority to conduct U.S. operations using only small aircraft from the requirement to file family support plans.⁵

⁴ As noted above, Cherokee filed an application in this Docket on November 18, 1998, requesting that we amend its foreign air carrier permit to include the small-aircraft limitation. We issued it the requested amended permit on February 10, 1999, by Order 99-2-5. North Cariboo filed a request under 14 CFR Part 294 to register as a Canadian Air Taxi, advising us that it did not oppose termination of its existing foreign air carrier permit once we had approved its Part 294 request. We approved North Cariboo's Part 294 registration on October 21, 1998, and are terminating its permit in this order.

⁵ By Order 98-1-31 we exempted those foreign air carriers holding our authority to operate using only small aircraft from the requirement that they file family support plans under the Foreign Air Carrier Family Support Act. We took this action because the Aviation Disaster Family Assistance Act of 1996, which requires family assistance plans of U.S. carriers, limited

Therefore, we will not in this proceeding terminate these two carriers' authority to conduct U.S. operations under their new small-aircraft authority, although we will terminate North Cariboo's foreign air carrier permit, since that permit has been superseded by its small-aircraft Canadian Air Taxi authority.

The authority of an additional foreign air carrier, Societe Nouvelle Air Martinique (Martinique), has, since we issued Order 98-10-3, expired by its terms.⁶ As the carrier holds no remaining Department authority, we need take no further action with respect to it in this proceeding.

With respect to the remaining foreign air carriers, we find that the public interest requires that we finalize our tentative findings and conclusions set forth in Order 98-10-3, and terminate their effective foreign air carrier permits and exemptions. A listing of the authority we are terminating is shown in the Appendix to this order.⁷

As discussed above, we have gone to extraordinary lengths to assist foreign air carriers in filing the required family support plans. We are pleased that, since the time we issued Order 98-10-3, twelve more foreign carriers have filed their plans, and two others have achieved compliance by modifying their Department authority to coincide with the small aircraft operations they are actually conducting. While we find that we must now act to

the scope of its coverage to certificated U.S. air carriers, thus excluding, as a class, U.S. air taxi operators. The Foreign Air Carrier Family Support Act of 1997, however, made no distinction as to the size of aircraft operated by affected foreign carriers, thus technically requiring compliance from all such carriers, including those operating only small, air taxi-sized aircraft. However, the clear intent of the Foreign Air Carrier Family Support Act was to extend the coverage of the Aviation Disaster Family Assistance Act to comparably situated foreign air carriers, and not to expand that coverage to include an additional class of carrier that operates only small aircraft.

⁶ Societe Nouvelle Air Martinique held an exemption issued by Order 98-1-4. That exemption expired on October 30, 1998.

⁷ By Order 99-2-18, we dismissed, at the applicants' request, applications of Blue Scandinavia AB (formerly Transwede Leisure AB) and Transwede Airways AB to renew Blue Scandinavia's exemption authority issued by Order 96-12-28; and to transfer the foreign air carrier permit of Transwede Airways AB, issued by Order 94-3-28, to Blue Scandinavia AB. We had proposed, in Order 98-10-3, to terminate both of these authorities. The effect of this dismissal was to terminate Blue Scandinavia's exemption noted in Order 98-10-3. The permit, however, remains in effect notwithstanding our dismissal of the permit transfer request, and we will terminate the permit in this order. In doing so, we note the statement of Blue Scandinavia/Transwede AB in their withdrawal request (filed in Dockets OST-96-1344 and OST-96-1345) that Transwede Airways AB, the permit holder of record, has now been acquired by the Norwegian carrier Braathens SAFE and currently has no homeland authority to serve the United States.

remove the authority held by the remaining non-filers, it is significant that none of these remaining foreign carriers opposed our termination of their permits or exemptions.

As we proposed in Order 98-10-3, we are terminating the authority held by these foreign air carriers by terminating their currently-effective foreign air carrier permits and exemption authorities. In some cases, these permits and/or exemptions have expired by their terms, but remain in effect because the carriers have filed timely renewal applications, and have invoked the automatic extension provisions of 5 U.S.C. 558(c), as implemented by 14 CFR Part 377, to keep these permits and/or exemptions in effect. In those instances, we are denying those requests for renewal, which will have the effect of terminating the carriers' permit and/or exemption authorities.

As a final matter, we are sensitive to the concerns raised by Kar-Air that our action terminating its authority not reflect adversely on it. We recognize that the majority of carriers which did not file are out of business or no longer serve the United States, and thus may not have been in a position to develop and file a family support plan. As we stated in Order 98-10-3, our action in this proceeding is without prejudice to the affected foreign air carriers refile for Department authority to conduct U.S. operations, at such time as they are prepared to comply with requirements related to that authority, including the provisions of the Foreign Air Carrier Family Support Act.

ACCORDINGLY,

1. Except as noted above, we make final our tentative findings and conclusions set forth in Order 98-10-3;⁸
2. We terminate the foreign air carrier permits and exemption authority referred to in the Appendix to this order;
3. We deny the applications for renewal of foreign air carrier permits and exemption authority referred to in the Appendix to this order;
4. Our action with respect to exemption authority and applications for renewal of exemption authority shall be effective on the service date of this order;
5. Our action with respect to foreign air carrier permits and applications for renewal of foreign air carrier permits shall, unless disapproved by the President of the United States under §41307 of Title 49 of the U.S. Code, become effective on the 61st day after its submission for §41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she

⁸ Since all interested parties have had the opportunity to file comments in this proceeding, we will not entertain petitions for reconsideration.

does not intend to disapprove this portion of the Department's decision under that section, whichever occurs earlier;⁹

6. We terminate this proceeding with respect to Aero Transcolombiana de Carga Ltda.; Aeronautica de Cancun; Cherokee Air Ltd., Garuda Indonesia; Jet Air International Charters, C.A.; Nigeria Airways, Ltd.; Seagreen Air Transport Limited; Sociedad Aeronautica de Medellin Consolidada; Societe Nouvelle Air Martinique; Transavia Airlines, C.V.; Translift Airways Limited d/b/a TransAer International Airlines; Trans North Turbo Air Limited; Transportes Aereos Bolivianos; and Windward Islands Airways International N.V.; and

7. We will serve a copy of this order on the foreign air carriers listed in ordering paragraph 6 and in the Appendix to this order; the Embassies of the homelands of these carriers in Washington, D.C.; the National Transportation Safety Board; the Federal Aviation Administration; and the Department of State.

By:

A. BRADLEY MIMS
Acting Assistant Secretary for
Aviation and International Affairs

(SEAL)

Appendix

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

⁹ This order was submitted for §41307 review on April 7, 1999. On May 25, 1999, we received notification that the President's designee under Executive Order 12597 and its implementing regulations did not intend to disapprove the Department's order.

Foreign Air Carrier Permits and Exemptions Being Terminated in this Proceeding

1. **Aerolineas Latinas, C.A.** (Venezuela), exemption issued by Order 94-12-44 (Docket 46768). This authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing of a timely application for renewal in Docket OST 95-783.
2. **Aeronaves del Peru, S.A.** (Peru), foreign air carrier permit issued by Order 89-9-17 (Docket 44944).
3. **Air Manitoba Limited** (Canada), foreign air carrier permit issued by Order 86-12-51 (Docket 43817).
4. **Air Niagara Express, Inc.** (Canada), foreign air carrier permit issued by Order 91-10-22 (Docket 45504).
5. **Anglo Airlines Limited** (United Kingdom), foreign air carrier permit issued by Order 87-3-64 (Docket 44576).
6. **Caicos Caribbean Airways Limited** (Turks & Caicos), exemption issued by Order 95-1-24 (Docket 48042). This authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing of a timely application for renewal in that Docket.
7. **Canair Cargo Ltd.** (Canada), foreign air carrier permit issued by Order 92-5-36 (Docket 46931), and exemption issued by Notice of Action Taken dated June 12, 1997 (Docket OST 96-1061).
8. **ChallengAir** (Belgium), foreign air carrier permit issued by Order 97-1-18 (Docket OST 96-1190).
9. **Cleare Air Limited** (Bahamas), foreign air carrier permit issued by Order 96-6-45 (Docket 49498).
10. **Compania de Aviacion "Faucett", S.A.** (Peru), foreign air carrier permit issued by Order 89-9-17 (Docket 44992).
11. **General Air Cargo, G.A.C., C.A.** (Venezuela), exemption issued by Order 92-9-55 (Docket 47132). This authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing of a timely application for renewal in that Docket.
12. **Interestatal de Aviacion, S.A.** (Mexico), foreign air carrier permit issued by Order 89-8-29 (Docket 45854).
13. **Jetall Holdings Corp.** (Canada), foreign air carrier permit issued by Order 95-11-45 (Docket 47605).
14. **Jetflight Limited** (Cayman Islands), exemption issued by Notice of Action Taken dated October 7, 1997 (Docket OST 97-2712).
15. **Kar-Air oy** (Finland), foreign air carrier permit issued by Order 85-2-71 (Docket 40371).

16. **Lineas Aereas La-Tur, S.A.** (Mexico), foreign air carrier permit issued by Order 89-8-29 (Docket 45697).
17. **Nordic European Airlines International AB** (Sweden), foreign air carrier permit issued by Order 96-12-3 (Docket OST 96-1616).
18. **North Cariboo Flying Service Ltd.** (Canada), foreign air carrier permit issued by Order 80-9-50 (Docket 38062). [NOTE: This carrier retains authority to conduct U.S. operations as a Canadian Air Taxi Operator under 14 CFR Part 294.]
19. **North Coast Air Services Ltd.** (Canada), foreign air carrier permit issued by Order 80-5-31 (Docket 32854).
20. **Phoenix Air Lines Ltda.** (Brazil), exemption issued by Order 96-1-27 (Docket OST 95-848). This authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing of a timely application for renewal in that Docket.
21. **Prairie Connection Ltd.** (Canada), foreign air carrier permit issued by Order 89-11-30 (Docket 45712).
22. **Quassar de Mexico, S.A. de C.V.** (Mexico), exemption issued by Order 93-7-1 (Docket 48825). This authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing of a timely application for renewal in that Docket.
23. **Regal Air Limited** (St. Kitts & Nevis), exemption issued by Order 90-6-49 (Docket 46225). This authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing of a timely application for renewal in that Docket.
24. **Rio Air Express, S.A.** (Brazil), exemption issued by Order 98-4-13 (Docket OST 95-921).
25. **Servicio Aereo de Honduras, S.A.** (Honduras), foreign air carrier permit issued by Order 87-1-26 (Docket 43250), and exemption issued by Order 95-3-6 (Dockets 48005 and 47780). These authorities have remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing of timely applications for renewal in those Dockets.
26. **Sky Freighters Ltd.** (Canada), exemption issued by Order 96-8-36 (Docket OST 96-1453). This authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing of a timely application for renewal in that Docket.
27. **Tradewinds Airways Limited** (United Kingdom), foreign air carrier permit issued by Order 86-10-58 (Docket 41484).
28. **Trans European Airways France S.A.** (France), exemption issued by Order 91-8-2 (Docket 47420). This authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing of a timely application for renewal in that Docket.

29. **Transporte de Carga Aerea Especializada y Serv.** (Mexico), foreign air carrier permit issued by Order 89-8-29 (Docket 46108).
30. **Transwede Airways AB** (Sweden), foreign air carrier permit issued by Order 94-3-28 (Docket OST 96-1344, formerly Docket 48318).
31. **Vacationair Inc.** (Canada), foreign air carrier permit issued by Order 89-10-6 (Docket 45847).
32. **Venezolana Internacional de Aviacion, S.A.** (Venezuela), foreign air carrier permit issued by Order 77-1-114 (Docket 30137), and exemption issued by Order 89-3-56 (Docket 44069). This exemption authority has remained in effect under the terms of the Administrative Procedure Act by virtue of the carrier's filing of a timely application for renewal in that Docket.
33. **World Wide Air Charter Systems** (Canada), foreign air carrier permit issued by Order 87-8-55 (Docket 44876).