



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

Issued by the Department of Transportation on October 6, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-98-4292

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Aero Continente, S.A.**

Date Filed: August 7, 1998, as clarified May 12, 1999

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between Lima, Peru, and Miami, FL; and charters pursuant to 14 CFR 212 of the Department's regulations.

On May 12, 1999, Aero Continente filed a pleading to clarify that the requested relief includes authority that would be limited to wet-lease operations conducted by a duly authorized and properly supervised U.S. or foreign air carrier, pending action on its application for a foreign air carrier permit (Docket OST-98-4291) and/or the full relief requested in this proceeding.¹

If renewal, date and citation of last action: New authority

Applicant representative: Lawrence Wasko 202-862-4370

Responsive pleadings: Fine Air Services, Inc., filed pleadings in opposition, which it subsequently withdrew on July 22, 1999.

DISPOSITION

Action: Approved in part; Remainder deferred

Action date: October 6, 1999

Effective dates of authority granted: October 6, 1999 - October 6, 2001

Remarks: We are granting Aero Continente authority to conduct, using wet-leased aircraft only, scheduled service between Lima, Peru, and Miami, Florida; and charters pursuant to 14 CFR 212. We are deferring action on that portion of Aero Continente's application requesting authority to conduct these operations using its own aircraft and crew.

Grant of this authority is consistent with the provisions of the U.S.-Peru Air Transport Agreement. We found, based on the record,² that the carrier is substantially owned and effectively controlled by citizens of Peru, properly designated and licensed, and operationally and financially qualified to undertake the proposed operations.³

We note that certain allegations were introduced into the record by Fine concerning Aero Continente. Notwithstanding Fine's withdrawal of its opposition, we nevertheless believe that the public interest requires that we address these allegations. Specifically, although Fine did not claim to have any knowledge of and took no position on the accuracy of certain newspaper reports which it placed in the record, it requested that the Department defer action on the application and investigate reports of involvement of the prior owner of Aero Continente and brother of its president, and of Aero Continente itself, in drug trafficking.

The Department has decided to approve Aero Continente's application after receiving a considerable amount of evidence on the subject. That evidence includes, *inter alia*, an affidavit from Aero Continente's counsel in Peru which states that there has been no Peruvian court decision that involves Aero Continente, and that a Peruvian court-ordered audit of Aero Continente did not reveal any involvement with illegal drug trafficking.

¹ On July 9, 1999, Aero Continente filed a further clarification of relief requested, which it subsequently withdrew on September 24, 1999.

² Aero Continente incorporated by reference into this proceeding its application for a foreign air carrier permit contemporaneously filed in Docket OST-98-4291.

³ We have been advised by the Federal Aviation Administration that it knows of no reason why we should act unfavorably on Aero Continente's application so long as its operations are specifically limited to the use of wet-lease carriers from the U.S. or a country that has been found by the FAA to meet ICAO standards regarding safety oversight.

The Department views the war against the drug trade in transportation as critical to the Administration's fight to disrupt the means by which drugs are brought to the United States. It is thus only after the careful consideration of the particular circumstances and record evidence in this case that we decided to approve this application.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

Standard exemption conditions (attached) Foreign air carrier permit conditions (Order - -)

Special conditions: In the conduct of the services authorized, Aero Continente shall use only aircraft wet-leased from a duly authorized and properly supervised U.S. or foreign air carrier that receives requisite authority under the provisions of 14 CFR 212 of the Department's regulations.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).