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

Issued by the Department of Transportation
on the 10th day of February, 2000

Application of

SPERNAK AIRWAYS, 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

Served: February 10, 2000

Docket OST-99-6499 -3

ORDER TO SHOW CAUSE

Summary

By this order, we tentatively conclude that Spernak Airways, Inc. (Spernak) is a citizen of the United States, and is fit, willing, and able to provide interstate scheduled air transportation of persons, property and mail, and should be issued a certificate of public convenience and necessity for such operations.

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 scheduled 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.

Spernak, located in Anchorage, Alaska, filed an application in Docket OST-99-6499 requesting authority under 49 U.S.C. 41102 to provide interstate scheduled air transportation of persons, property and mail. Spernak accompanied its application with information required by section 204.3 of our regulations for an examination of its fitness.¹

No answers were filed to the application and no other issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that Spernak is a U.S. citizen and is fit, willing, and able to operate its proposed scheduled passenger air transportation services, subject to conditions. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

The Company

Spernak has been based at Merrill Field in Anchorage since its founding in 1952.² The carrier is currently registered as an air taxi operator under Part 298 of our Economic Regulations.

Spernak is wholly-owned by Michael Spernak.³ In addition to its air taxi services, the applicant also offers the sale of aviation fuel and supplies to the general public at Merrill Field and holds a contract with the U.S. Postal Service to carry mail between Anchorage and Alexander Creek. The applicant currently has a fleet of six aircraft--four six-seat Cessna C-207's, one three-seat Cessna C-172, and one three-seat Cessna C-180--and states that, if issued the certificate it seeks, it intends to offer scheduled passenger services in Alaska over an Anchorage-Tyonek-Beluga routing using one of its Cessna 207 aircraft.

Managerial Competence

The carrier's owner, Michael Spernak, also serves as its President, Board member,⁴ and Director of Operations. Mr. Spernak has been involved with the carrier since he was a teenager working with his father. He has been President and Director of Operations of the company since 1991.⁵ Mr. Spernak holds a Commercial Pilot license from the FAA.

¹ Spernak has since supplemented its application with additional fitness information.

² Spernak initially operated as a sole proprietorship. It was incorporated in the State of Alaska in September 1967.

³ Michael Spernak is the son of the company's late founder, George Spernak.

⁴ Spernak's Board of Directors has two members--Michael and Sonya Spernak. Sonya Spernak is Michael's wife and serves as the carrier's Secretary/Treasurer.

⁵ His early roles with the company included serving as a line-man and ramp agent for the carrier. Subsequently, he served as Assistant Manager (1978-1982) and Manager (1982-1991). Until recently, he also served as the carrier's Chief Pilot.

Douglas Lockwood is the applicant's Chief Pilot. Mr. Lockwood holds Commercial Pilot and Flight Instructor certificates issued by the FAA. He served as a line pilot for Tanana Air Service from 1991 to 1992 and joined Spernak as a pilot, flight instructor, and check airman in 1993. He recently assumed the responsibilities of Chief Pilot. Mr. Lockwood has approximately 7,400 total flight hours, including over 7,000 as pilot-in-command.

Spernak's Director of Maintenance is Ward Simonis. Since 1988, Mr. Simonis has owned Ward's Aero Service, which provided maintenance services to commercial operators. He became Director of Maintenance for Spernak in 1993.⁶ Mr. Simonis holds Airframe and Powerplant Mechanic and Private Pilot certificates from 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,⁷ we tentatively find that Spernak's management team is qualified to manage its proposed limited certificated air carrier operations.

Operating Plan and Financial Position

If certificated, Spernak intends to provide services similar to those it currently offers. According to the carrier, these include operations from Anchorage to various points in Alaska, including Tyonek and Beluga. Spernak intends, however, to conduct ten weekly scheduled flights over an Anchorage-Tyonek-Beluga-Anchorage routing using one of its six-seat Cessna C-207 aircraft.⁸

The carrier has provided unaudited balance sheets reflecting its financial position at June 30, 1997, 1998, and 1999, as well as at September 30, 1999. It has also provided income statements for the 12-month periods ending June 30, 1997-1999, as well as an income statement for the three months ending September 30, 1999. These documents show that the carrier's operations during this time have been profitable overall. For the 15-month period ending September 30, 1999, the company reported operating and net profits of \$5,992 and \$12,054, respectively, on approximately \$1.4 million in revenues.⁹ Spernak's September 30, 1999, balance sheet shows that, at that date, the carrier had \$25,372 in cash, total assets of \$402,000, positive working

⁶ Mr. Simonis spends approximately 35 percent of his professional time in fulfilling the responsibilities of this position.

⁷ Before authorizing a carrier to conduct air transportation operations, the FAA evaluates the carrier's Directors of Operations and Maintenance and Chief Pilot with respect to the minimum qualifications for those positions as prescribed in Parts 119 and 135 of the Federal Aviation Regulations (FARs). 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. In this case, the FAA has advised us that the above individuals have been approved by that agency for their respective positions.

⁸ The company expects that its scheduled flights will total approximately 390 flight hours during the first year.

⁹ For the 39-month period ending September 30, 1999, the company reported operating and net profits of \$18,838 and \$53,226, respectively, on approximately \$3.3 million in revenues.

capital of approximately \$104,000, a current assets to current liabilities ratio of 1.73 to 1,¹⁰ and total stockholders' equity of \$260,814.

Spernak has provided a detailed forecast income statement for its first year of scheduled services as well as a combined one-year forecast for all of its business activities.¹¹ We have reviewed these forecasts and believe they are reasonable for the operations proposed. According to Spernak, it expects that, in the first year, it will incur approximately \$96,517 in expenses for its two daily Anchorage-Tyonek-Beluga-Anchorage scheduled flights.¹² Since it is presently providing charter flights over this routing, the company states that it does not expect to incur any significant pre-operating expenses in connection with these services.¹³

Spernak's internal working capital appears adequate to support the commencement of its planned 10 weekly scheduled flights.¹⁴ Moreover, we would expect its on-going charter and mail operations, which have been profitable overall in the past, to provide a reliable source of cash flow to the carrier.

In view of the above, we tentatively conclude that the applicant has developed a reasonable operating proposal and will have sufficient resources to conduct its certificated services without posing an undue risk to consumers or their funds.¹⁵

¹⁰ Spernak's balance sheet shows that its total liabilities of \$141,720 at September 30 included \$86,000 in "notes payable". Based on information provided by the carrier, it appears that some of this \$86,000 may actually reflect a long-term, rather than short-term (e.g., due within 12 months) payable. To the extent that this is the case, the applicant's working capital position would improve. However, since the carrier did not provide a breakdown of this obligation, for our purposes here, we have treated the entire payable as a short-term (i.e., current) liability.

¹¹ The applicant states that its forecasts are based on its historical operating experience.

¹² Spernak estimates its total first year operating expenses (scheduled and other) at approximately \$1.039 million.

¹³ In this regard, Spernak states that it already has the aircraft, personnel and facilities to provide these services and also notes that its current liability insurance coverage is sufficient to meet the Department's requirements for certificated air carriers.

¹⁴ In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of its normal operations. Because projected expenses during one or more of the first three months of operations frequently do not include all costs that will be incurred during a "normal" period of operations, it is our practice to base our three-month test on one-quarter of the first year's operating cost forecast. In calculating available resources, projected revenues may not be used.

¹⁵ As is our practice, however, prior to issuing Spernak effective certificate authority we will require that the carrier provide us with updated information demonstrating that it continues to have sufficient financial resources available to it to meet our financial fitness test.

Compliance Disposition

Spernak states that there have been no charges of unfair, deceptive or anticompetitive business practices, or fraud, felony or antitrust violations brought against it, its key personnel, or any other relevant company within the past ten years, and that there are no actions or judgments outstanding against it or any of these persons. In addition, the applicant declared that there are no investigations pending and that no enforcement actions have been taken against it or any of these persons regarding compliance with the Statute or any regulations or orders issued pursuant to the Statute in the past ten years.

Our search of the Department's enforcement files found no record of problems involving this company, its owners, or its key personnel. Further, a search of FAA records indicates that Spernak has had no civil penalties or certificate actions imposed on it.¹⁶ The FAA advises that it has determined that Spernak has the management, manuals, procedures and equipment to implement its proposed scheduled flights, and that that agency has no objection to our grant of the requested certificate to the applicant.

Based on the above, we tentatively find that Spernak 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.

Spernak's sole shareholder, Michael Spernak, is a U.S. citizen, as are all of its key management personnel. In addition, the applicant has furnished an affidavit attesting that it is a U.S. citizen, and there is no information that leads us to conclude the applicant is under the control of non-U.S. citizens.

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

¹⁶ The company had one accident and three incidents between 1986 and 1994, but none since 1994. Since 1992, the company has been issued three letters of corrections and two warning notices by the FAA. These administrative actions involved either recordkeeping or drug testing issues.

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 application and points at issue and to support such objections with detailed economic analyses.¹⁷ We will not entertain general, vague, or unsupported objections. If no substantial objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to certification and fitness and will issue Spernak a certificate that will contain an exact copy of the attached Terms, Conditions, and Limitations.

EFFECTIVE CERTIFICATE CONDITIONS AND LIMITATIONS

If Spernak is found fit and issued the certificate 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 the certificate. Among other things, this includes our receipt of evidence from the FAA demonstrating that Spernak has received authority from that agency to conduct the certificated scheduled passenger air transportation it proposes, that Spernak has obtained liability insurance coverage meeting the requirements of Section 205.5(b) of our rules for all of its aircraft, and that it has financial resources sufficient to meet our financial fitness criteria and has undergone no other changes in its ownership, management, operations, finances, or compliance posture that would alter our finding of fitness for the company.

Moreover, given the limited nature of the applicant's proposed operations, we will impose certain limitations on Spernak's certificate authority. The Department has adopted a policy, consistent with the recommendations of the FAA 90-Day Safety Review, issued September 16, 1996, of imposing conditions in fitness orders to facilitate appropriate monitoring of individual air carriers' growth.¹⁸ Along these lines, we note that our finding of fitness for Spernak is based on the operating plans described in its application, namely, aircraft that can be operated under Part 135 of the Federal Aviation Regulations. Were the applicant to propose to expand its operations to include larger aircraft, our findings of fitness, particularly involving the adequacy of its management team and financial resources, might no longer apply.¹⁹ Therefore, we propose to

¹⁷ 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.

¹⁸ *See, e.g.*, Orders 99-8-3, 98-1-3, 97-10-22, 97-11-34, and 97-12-18.

¹⁹ In this regard, we note that the operation of scheduled passenger services with aircraft having a seating capacity of 10 or more would require the carrier to transition to Part 121 of the FARs, a step which may require the applicant to obtain additional management personnel and/or incur additional financial outlays.

limit any authority granted to Spernak to operations with aircraft having a maximum passenger capacity of less than 10 passenger seats. Should Spernak wish to operate larger aircraft, it must first be determined fit for such operations.

Furthermore, we remind Spernak 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. Thus, should Spernak propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.²⁰ The compliance of the carrier with this requirement is essential if we are to carry out our responsibilities under 49 U.S.C. 41110(e).²¹

Finally, to aid the Department in monitoring the fitness of new air carriers, we have also adopted a requirement that all certificated air carriers must submit a detailed progress report to the Air Carrier Fitness Division within 45 days following the end of the first year of certificated 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,²² 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 an order making final our tentative findings and conclusions stated above and award a certificate to Spernak

²⁰ Spernak 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. In addition, 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 company fails to file the updated fitness 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.

²¹ We also remind Spernak 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.

²² 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.

Airways, Inc., authorizing it to engage in interstate scheduled air transportation of property and mail, subject to the attached specimen Terms, Conditions, and Limitations.

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the certificate award set forth here to file such objections with the Department of Transportation Dockets, 400 Seventh Street, S.W., Washington, D.C. 20590, in Docket OST-99-6499, 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.
3. 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.
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions and will issue Spornak Airways, Inc., a certificate that will contain an exact copy of the attached specimen Terms, Conditions, and Limitations.²³
5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a notice of this order in the Federal Register.

By:

A. BRADLEY MIMS
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>*

²³ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



SPECIMEN

Attachment

Terms, Conditions, and Limitations

SPERNAK AIRWAYS, 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 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, updated first-year expense forecasts, 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) or issue tickets for the operations proposed under this certificate, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."

- (3) *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.*
- (4) *The authority granted herein is limited to operations conducted with aircraft having a maximum passenger capacity of less than 10 seats.*
- (5) *The holder's authority is effective only to the extent that such operations are also authorized by the FAA.*
- (6) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (7) *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.*
- (8) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*
 - (a) *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.*
 - (b) *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.*
- (9) *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.*

(10) 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. 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 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.

SERVICE LIST FOR SPERNAK AIRWAYS, INC.

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