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ORDER 2000-8-5



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

Issued by the Department of Transportation
on the 27th Day of July, 2000

Served: August 4, 2000

Joint application (as amended) of

FINE AIR SERVICES CORP.
and
ARROW AIR, INC.

Docket OST-99-5140 - 8

for approval of a transfer of route authority under
49 U.S.C. 41105

ORDER TRANSFERRING CERTIFICATE AUTHORITY

Summary

By this order, we (1) find that Arrow Air, Inc. (Arrow) continues to be fit, willing, and able to conduct all-cargo operations as a certificated air carrier,¹ and (2) approve the transfer of the certificate and exemption authority among Arrow Air and Fine Air Services, Inc. (Fine Air) currently held by each.² All frequency allocations currently held by Fine Air will also be transferred to Arrow.

Background

On February 23, 1999, Fine Air Services Corp. (Fine Corp.) and Arrow advised the Department that they had entered into an agreement whereby Fine Corp., the parent of

¹ Arrow holds interstate scheduled combination certificate authority, as well as foreign scheduled combination certificate authority to serve various points in Europe, the Caribbean, Central America, and South America (Route 343F). These certificates were last reissued by Order 95-6-39. However, as referenced in that order, the passenger authority contained in these certificates is not effective and the company currently is authorized to conduct all-cargo operations only. Arrow also holds an experimental all-cargo certificate for Route 710 to serve Peru that expires in October 2001 (see Order 96-10-2), as well as exemption authority to serve various points in Latin America.

² Fine Air holds interstate and foreign charter all-cargo certificate authority and foreign scheduled all-cargo certificate authority to serve several countries (Route 644, as amended). (See Orders 97-7-30 and 99-12-7) The company also holds exemption authority to serve various markets in Latin America. Only the certificate and exemption authority currently held by Fine Air that is not duplicative of Arrow's certificate authority will be transferred.

Fine Air, would acquire all of the outstanding stock of Arrow. The agreement also provided that Fine Corp. would acquire other assets, principally aircraft and parts, previously held by Arrow's parent. Fine Corp. stated that it had no plans to merge Arrow's operations with those of Fine Air and would continue to operate Arrow under the oversight of Arrow's current senior management.

Also on February 23, 1999, Fine Corp. and Arrow jointly filed an application in Docket OST-99-5140 seeking the Department's approval under section 41105 of the Statute of the *de facto* transfer of the certificate and exemption authorities held by Arrow to Arrow under the ownership of Fine Corp.³

On March 4, 1999, Fine Corp. and Arrow jointly filed in Docket OST-99-5196 an application for an exemption from section 41105 to the extent necessary to allow Fine Corp. to complete its acquisition of Arrow pending the Department's action on the *de facto* transfer application. This request was granted by Order 99-4-5, issued April 9, 1999.

Since that time, the underlying request for the Department's approval of the *de facto* transfer application has remained pending. This request was amended on April 6, 2000, to reflect a change in Fine Corp.'s plans to continue to operate Fine Air and Arrow as separate, independent companies, but instead to merge the two carriers. The amended request asks that the Department approve the transfer of the authorities held by Fine Air to Arrow, the surviving air carrier upon completion of the merger. This amendment also contained a request that the Department register the trade names "Fine Air" and "Arrow Air" under which the surviving entity plans to conduct business.

³ On March 12, 1999, an answer to the *de facto* transfer application was received from Gemini Air Cargo. In its filing, Gemini stated that, while it had no objection to the Department's approval of the joint application as to authority to any country that provides open entry to U.S. carriers, it asks the Department to make a positive determination that the requested route transfer will not present any problems with respect to the entry of another air carrier into each of the markets involved prior to approving the *de facto* transfer. Gemini noted that it was particularly concerned over the impact the transfer would have on the ability of other carriers to serve Colombia, Ecuador, and Venezuela. Gemini's arguments in this docket were identical to those it made in response to the joint applicants' exemption request (Docket OST-99-5196) and are set forth in detail in Order 99-4-5, along with the joint applicants' response to these arguments. While the joint applicants amended their request in this docket from a *de facto* transfer of Arrow's authority to Fine Air to one involving the actual transfer of Fine Air's authority to Arrow on April 6, 2000, Gemini has not filed any response to this amendment. Moreover, since the filing of its answer in March 1999, Gemini has received authority to serve Colombia (*see* Notice of Action Taken in Docket OST-99-6633, issued March 30, 2000) and the Department has initiated the *U.S.-Ecuador All-Cargo Frequency Allocation Proceeding* (Docket OST-2000-7513) in which Gemini is seeking authority.

PUBLIC INTEREST

Section 41105 of the Statute (49 U.S.C. 41105) permits the Department to approve a certificate transfer if it finds that the transfer is consistent with the public interest. The Department has adopted as its public interest standard in such cases a policy of allowing proposed transfers provided that they do not conflict with important international aviation policy objectives and are not otherwise inconsistent with the public interest.⁴ In determining the public interest, the Department finds that the acquiring entity is a U.S. citizen and is fit to hold the certificate authority.⁵ Moreover, section 41105(b) requires the Department to analyze the impact of the transfer on the viability of the carrier applicants, competition in the domestic airline industry, and the trade position of the United States in the international air transportation market. Also, the Department has stated that it will carefully consider the impact of any proposed sale of route authority on airline workers.⁶

This case involves the combination of two relatively small airlines that hold scheduled authority to serve a number of international markets. As a result, we must examine the effects of the transaction in the context of our aviation agreements with the countries involved and competition in the affected markets to determine if such a merger is in the public interest. After a careful review of the original and amended applications and the transaction as implemented, we have determined that the transfer of authority among Fine and Arrow meets our standards for approval and is consistent with the public interest.

With the exception of Ecuador, our aviation agreements with all of the countries involved permit operations by multiple U.S. air carriers. Thus, to the extent that Fine and Arrow each hold authority to the same countries, the merger of these airlines should not have a significant impact on competition, as other airlines are free to enter the market as demand warrants.⁷ To the extent that Fine will transfer to Arrow

⁴ See, e.g., *Joint Application of United Parcel Service Co. and Challenge Air Cargo, Inc.*, Order 2000-3-2, p.4, *Joint Application of Northwest Airlines and Delta Air Lines*, Order 95-4-41, p.3, *Joint Application of Federal Express Corporation and Evergreen Airlines*, Order 95-8-9, p.4, and *Joint Application of Federal Express Corporation and Florida West International*, Order 97-10-23, p.4.

⁵ See *Federal Express*, Order 89-3-21, p7.

⁶ See *Initiative to Promote a Strong Competitive Aviation Industry*, January 1994.

⁷ While our aviation agreement with Venezuela provides for multiple entry by U.S. air carriers, over the past several months, Venezuela has refused to approve services by additional U.S. carriers. Fine and Arrow both now hold authority to serve Venezuela, although Fine holds authority to serve some additional Venezuelan points that we are transferring to Arrow. Since Arrow already holds some authority to serve Venezuela, we would not expect that Arrow would encounter any problems with respect to its enhanced Venezuela operations as a result of the transfer. Moreover, in these circumstances, we do not find that the transfer, although reducing the number of competitors in the market, will adversely affect the competitive opportunities of other

authorities not currently held by Arrow, there will be a one-for-one replacement in the markets of service from Fine to Arrow. As discussed below, with the merger, Arrow will have the benefits of a combined aircraft fleet, personnel, and financial capabilities for its operations that should facilitate its use of the international route rights and its competitive ability in the markets.

Our aviation agreement with Ecuador permits services by multiple U.S. air carriers but limits the operations of the carriers collectively to 15 weekly frequencies. Fine and Arrow are two of four airlines now authorized to serve Ecuador. Fine holds an allocation of two weekly frequencies, and Arrow holds an allocation of three weekly frequencies.⁸ While the proposed merger of the airlines will increase Arrow's frequencies and reduce the number of competitors, Arrow will continue to be one of several airlines serving Ecuador and will hold only one-third of the available frequencies. Taking into consideration these circumstances and the fact that no party has opposed Fine's and Arrow's plans to operate as a merged entity, we are persuaded that the transfer will not produce significant adverse competitive consequences in the market that would warrant withholding transfer of Fine's two weekly Ecuador frequencies to Arrow.

We also conclude, as more fully discussed below, that the transfer will have no impact on the U.S. citizenship of Arrow, and that Arrow will continue to be fit to conduct its certificated all-cargo operations, as well as those authorized by the transferred authority, subject to certain conditions and limitations.

In addition, we find that approval of this transfer will enhance the viability of the surviving air carrier.⁹ While the number of operating all-cargo carriers will be reduced by one upon completion of this merger, no actual reduction in competition in the domestic airline industry will result, as Fine Air and Arrow, under their current common ownership, no longer directly compete with each other. Moreover, because the current operations of Fine Air will continue to be provided by Arrow, the transfer will have no negative impact on the trade position of the United States in the international air transportation market. Finally, the transfer will involve no significant loss of jobs and will have no adverse effect on the majority of the employees involved.

air carriers in the market. We will continue to work with the Venezuelan authorities to facilitate operations by additional U.S. air carriers.

⁸ The other 10 weekly frequencies are allocated to Kitty Hawk International (three) and United Parcel Service (UPS) (seven). UPS was allocated these frequencies pursuant to the Department's approval of the transfer of Challenge Air Cargo's Ecuador authorities to UPS by Order 2000-6-7. That order permits Challenge to continue to operate the routes pending foreign government approval of UPS' service. We are currently conducting a proceeding to reallocate Kitty Hawk's frequencies in Docket OST-2000-7513.

⁹ As noted in the section of this order dealing with the financial condition of Fine Air and Arrow, the joint applicants believe that a full merger of these two companies will result in significant cost savings.

Thus, we conclude that approval of the transfer will benefit the public and will not conflict with our international aviation objectives.

FITNESS

Currently, Arrow operates 9 narrow-body DC-8 and 3 wide-body L-1011 freighter aircraft providing all-cargo service between the U.S. and various countries, primarily in the Caribbean and Latin America, while Fine Air operates a similar fleet composed of 13 DC-8s and 1 L-1011 providing all-cargo service primarily in the same geographic regions. Upon approval of the transfer of Fine Air's certificate authority to Arrow, Arrow will operate the combined fleet of 26 aircraft to conduct all of the service currently provided separately.

Ownership and Management

Fine Air has been owned by Fine Corp., or its principals, since its inception in March 1989,¹⁰ while Arrow came under Fine Corp.'s ownership in April 1999. There will be no change in the ownership of Arrow, the surviving air carrier, as a result of the merger of these two companies. Various management and key technical personnel currently with Fine Air will assume positions at Arrow. However, Fine Corp. has not yet identified which individuals currently holding senior management and technical positions with Fine Air and Arrow will serve in their same capacity or hold other positions in the merged carrier. The company maintains, however, that each person noted below is qualified to hold a position in the same technical area with post-merger Arrow.

Mr. J. Frank Fine currently serves as Chairman of the Board of Directors of Fine Corp., Fine Air, and Arrow Air. Mr. Barry H. Fine currently serves as a director with each of these companies, as well as the President and Chief Executive Officer of Fine Air. The qualifications of these individuals were discussed in detail in Order 92-3-23, issued March 11, 1992.

Mr. Guillermo J. Cabeza currently serves as President and Chief Executive Officer of Arrow and Chief Operating Officer of Fine Air.¹¹ He assumed his positions with Arrow in July 1998 after serving for more than six years in various flight-related and senior management positions with the company.

Mr. Michael Mendez, an Airframe and Powerplant mechanic, currently serves as Fine Air's Vice President of Maintenance/Director of Maintenance. He began working as an

¹⁰ Initially, the ownership of Fine Air was equally split between J. Frank Fine and Barry H. Fine. In mid-1998, the ownership of Fine Air was transferred to Fine Corp., which itself is wholly owned by the noted individuals.

¹¹ Mr. Cabeza also serves as a director of Fine Air.

aircraft mechanic in 1977. In 1984, he joined Arrow as its Director of Maintenance, later becoming its Vice President of Maintenance. In 1989, Mr. Mendez left Arrow and during the next 10 years worked as a General Manager with two different repair stations. He joined Fine Air in his current capacity in May 1999.

Mr. Luis A. Planas, an Airframe and Powerplant mechanic, currently serves as Fine Air's Director of Quality Control. Mr. Planas began his career in 1986 serving as a mechanic with Eastern Airlines. During the next five years, Mr. Planas held increasingly responsible positions with Eastern. He then joined Flagship Express as a maintenance controller and, in 1993, he joined Reno Air as a mechanic. During the next six years, Mr. Planas held increasingly responsible positions with that carrier, ending as its Director of Maintenance.

Mr. Richard McCallman joined Fine Air in 1993 as its Chief Inspector. As noted more fully in Order 93-6-22, Mr. McCallman holds an Airframe and Powerplant mechanic certificate from the FAA and has a long career in aviation maintenance that includes more than 35 years with National Airlines, two years with Pan American, and ten years with Airlift International, prior to his joining Fine Air.

Mr. Steve Clements, an Airline Transport Pilot, serves as Fine Air's Director of Operations. He began his aviation career in 1989 as a pilot with United Parcel Service. In 1993, he worked briefly as a pilot for Fine Air before assuming a pilot position with Kitty Hawk International Airways where he remained until rejoining Fine Air in mid-1999.

Mr. George Grinrod currently serves as Chief Pilot of Fine Air, a position he assumed earlier this year. Previously, Mr. Grinrod, an Airline Transport Pilot with over 21,000 flight hours, was a pilot for almost 30 years with American International Airways, Rosenbalm Aviation, and Braniff International.

Mr. Carlos Veliz, an Airframe and Powerplant mechanic and commercial pilot, serves as Vice President/Director of Safety for Fine Air. In 1986, Mr. Veliz began as a flight line supervisor with Batch Air, and then moved on to flight and quality control positions with Arrow. From 1993-1997, Mr. Veliz worked as a training consultant with Greenwich Air Services, before rejoining Arrow as a first officer. Later in 1997, Mr. Veliz was promoted to Director of Flight Safety with Arrow where he remained until early 1999. During the first half of that year, he was self-employed providing consulting services to Fine Air on the development of its safety program. In June 1999, he joined Fine Air full-time as its Vice President-Safety.

Mr. Nelson Gonzalez, an Airframe and Powerplant mechanic, serves as Director of Maintenance for Arrow. Prior to assuming this position in 1997, Mr. Gonzalez worked for a number of years in maintenance-related positions, including as senior management, with several other air carriers.

Mr. Richard L. Weber currently serves as Arrow's Director of Quality Control. Mr. Weber, an Airframe and Powerplant mechanic, began working in aircraft maintenance in 1960 as an aircraft crew chief for the U.S. Air Force. Since that time, he has held a variety of maintenance positions with carriers and repair stations that included Pan American Airways, Southern Air Transport, and Batch Air. He joined Arrow as a mechanic in 1992 and has held increasingly responsible positions with the company since that time.

Arrow's Vice President and Director of Operations is Mr. Joseph Gleason. Mr. Gleason, an Airline Transport Pilot, has been an employee of Arrow since 1981, starting as a pilot and later serving as its Chief Pilot. Prior to joining Arrow, he worked for approximately four years with two other companies.

Mr. William Rubiano, an Airline Transport Pilot with more than 25,000 total flight hours accumulated over the last 40 years, serves as Arrow's Chief Pilot. Mr. Rubiano spent the first 28 years of his career working as a pilot with various foreign air carriers. In 1989, he became a pilot with Millon Air, where he worked until joining Arrow in 1997.

Mr. Thomas J. Quehl, an Airline Transport Pilot, serves as Arrow's Director of Safety. Mr. Quehl commenced his aviation career in 1990 as a pilot with Arrow. In 1995, he left this position and joined American International Airways, also as a pilot, where he served until rejoining Arrow in 1999 as its Director of Safety.

All of the individuals noted above are experienced in overseeing operations of the same type that will be conducted by Arrow, post-merger. Further, in approving these individuals for their current positions with Arrow and Fine Air, the FAA has reviewed their experience and background and found them to be satisfactory.¹² Therefore, we conclude that Arrow has demonstrated that, post-merger, it will continue to have the management skills and technical ability to conduct all-cargo operations.

Operating Plans and Financial Condition

Based on the information available to us, it appears that the overall financial condition of both Arrow and Fine Air is good. As of March 31, 2000, Arrow had current assets of \$20.8 million and current liabilities of \$23.5 million, resulting in negative working capital of \$2.7 million and a current assets to current liabilities ratio of 0.89:1. Arrow had no long-term debt and its net equity situation was a positive \$20.11 million.

¹² The FAA evaluates certain of an air carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. 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.

As of March 31, 2000, Fine Air had current assets of \$59.4 million and current liabilities of \$63.5 million, resulting in negative working capital of \$4.1 million and a current assets to current liabilities ratio of 0.94:1. Moreover, while the company has a substantial long-term debt burden (\$190.1 million as of March 31), it maintained a positive net equity position of \$9.4 million.

Both carriers provided forecast balance sheets reflecting their anticipated financial condition immediately preceding the proposed merger, as well as a post-merger balance sheet for Arrow. These forecasts show that immediately prior to the merger, Arrow anticipates current assets of \$18.9 million and current liabilities of \$24.9 million giving it a negative working capital position of \$6.0 million and a current assets to current liabilities ratio of 0.76:1, no long-term debt, and net stockholder's equity of \$18.4 million; while Fine Air forecasts that it will have current assets of \$54.3 million and current liabilities of \$57.1 million giving it a negative working capital position of \$3.1 million and a current assets to current liabilities ratio of 0.95:1, long term debt of \$194.3 million, and net stockholder's equity of \$7.8 million.

Upon completion of the merger, Arrow will have current assets of \$53.2 million and current liabilities of \$62.1 million giving it negative working capital of \$8.9 million and a current assets to current liabilities ratio of 0.86:1, long-term debt of \$194.3 million, and net stockholder's equity of \$23.9 million.

The April 30, 2000, consolidated balance sheet for Fine Corp., the parent of both carriers, shows total assets of \$81.2 million and current liabilities of \$78.7 million, resulting in positive working capital of \$2.5 million and a current assets to current liabilities ratio of 1.03:1. Moreover, this balance sheet shows that Fine Corp. had positive stockholders' equity of \$27.2 million as of April 30. Despite its good financial condition overall, the company's cash situation at June 1 was such that it deferred making a \$9.4 million interest payment on its long-term notes due on that date.¹³ The company attributed this cash shortage to a combination of sharply increased fuel costs during the last several months and the costs associated with operating Fine Air and Arrow as separate companies. Fine Corp. anticipates that completion of the merger at issue will result in various cost savings. In the interim, Fine Corp. obtained additional short-term financing with which to make this payment, and has recently completed a restructuring of its debt and is now in full compliance with the terms of its notes.¹⁴

Further, nothing in our review of the overall financial condition of Arrow, Fine Air, and Fine Corp. indicates that the condition of any of these entities is such that the air carriers involved are not financially fit to conduct the operations authorized by their respective certificates or that upon completion of the merger Arrow will not be fit to conduct the combined operations.

¹³ Under the terms of the notes, non-payment of interest does not constitute an event of default unless it continues for more than 30 days.

¹⁴ See *Consolidated Reply of Fine Air Services, Inc.* in Docket OST-00-7513, pp.9-10.

Compliance Disposition

Arrow and Fine Air have, in the past, experienced significant problems complying with both the Department's reporting requirements and the Federal Aviation Regulations. However, these issues have been resolved and both carriers are currently performing in a satisfactory manner.¹⁵ Further, no information has come to our attention that would indicate that either carrier, or Fine Corp., are the current subject of any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations, or other legal action other than those that result in the ordinary course of business.

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 and controlled 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.

Both Arrow and Fine Air are currently owned by Fine Corp. which, in turn, is owned by Messrs. J. Frank Fine and Barry H. Fine. No changes in this ownership structure are contemplated as a result of the merger of Arrow and Fine Air. We have previously found Fine Air to be a U.S. citizen under this same ownership. Further, all of the individuals who will hold key management positions with the post-merger Arrow are also U.S. citizens, and there is nothing in the record that would lead us to conclude that control of the post-merger Arrow will not rest with citizens of the United States.

In view of the foregoing, we conclude that Arrow will remain a U.S. citizen and will continue to be fit, willing, and able to provide all-cargo operations.

¹⁵ Most recently, on March 27, 2000, Fine Air entered into a plea agreement with the Department of Justice under which it plead guilty to various felony charges arising from actions that occurred in August 1997. Under the terms of this plea agreement, Fine Air accepted the imposition of a \$3.5 million fine. The carrier is current in its payment of this fine. More importantly, however, pursuant to the plea agreement and probation set by the federal court the company has undertaken certain steps which are designed to prevent similar violations from occurring in the future. The obligations and terms set by this agreement and Fine's probation apply to any successors or transferees of Fine Air, including Arrow, and should the company violate the terms of its probation or plea agreement, or engage in other conduct in contravention of federal or state law, such actions will have a significant negative effect on our view of its compliance disposition and, accordingly, its fitness.

CERTIFICATE CONDITIONS AND LIMITATIONS

Our fitness findings stated above are based solely on our evaluation of post-merger Arrow's ability to conduct the operations now conducted separately by Arrow and Fine Air using a total of 26 aircraft. Both carriers currently have certain conditions and limitations attached to their authority which limit the number of aircraft each may operate, as well as Arrow's ability to conduct the passenger operations authorized by some of its certificates. Currently Arrow is restricted to the operation of no more than 12 aircraft (see letter to Arrow Air dated September 10, 1998, from the Director, Office of Aviation Analysis) and Fine Air is restricted to the operation of no more than 20 aircraft (see Order 98-1-3). While Arrow is currently operating all aircraft authorized by its authority, Fine Air currently operates only 14 of the 20 aircraft authorized.

The joint applicants have requested that the Department remove all aircraft limitation restrictions for the post-merger Arrow. They have not, however, presented any plans to operate additional aircraft and we have not evaluated Arrow's fitness to conduct any operations beyond those that will result from a simple combining of both carriers current operations. Therefore, we will impose a new limit based on the number of aircraft now separately authorized. As a result, post-merger Arrow may not operate more than 32 aircraft without first providing 45-days advance notification to the Department of its intent to do so and demonstrating its fitness to conduct operations with any additional aircraft.

In addition, our findings do not pertain to Arrow's fitness to conduct passenger operations. Arrow has not conducted any passenger operations since on or before March 18, 1995, its current certificates contain a condition restricting its ability to institute such operations without further action by the Department, and it no longer holds operations specifications from the FAA authorizing passenger operations. Moreover, the authority contained in the Fine Air certificate being transferred is for all-cargo operations only. Therefore, we will take this opportunity to remove the unused passenger authority from Arrow's certificates and reissue these certificates for all-cargo operations only.

Finally, we will cancel all redundant certificate and exemption authority currently held by Fine Air that we are not transferring to Arrow.

ACCORDINGLY:

1. We find that Arrow Air, Inc. d/b/a Fine Air and d/b/a Arrow Air continues to be a U.S. citizen and is fit, willing, and able to engage in certificated all-cargo operations.
2. We find it is in the public interest to approve the transfers of international certificate, exemption, and frequency authority among Arrow Air, Inc., and Fine Air Services, Inc., held by each.

3. We find that it is in the public interest to transfer to Arrow Air, Inc. d/b/a Fine Air and d/b/a Arrow Air:

- (a) the certificate authority of Fine Air Services, Inc., for Route 644 as reissued by Order 99-12-7;
- (b) the exemption authority of Fine Air Services, Inc., to provide all-cargo operations between the United States and Peru awarded by Notice of Action Taken dated October 2, 1998 (Docket OST-98-4349),¹⁶ and between Miami and Valencia, Venezuela, awarded by Notice of Action Taken dated October 15, 1998 (Docket OST-96-1770);¹⁷ and
- (c) the frequency allocation of Fine Air Services, Inc., of weekly frequencies for all-cargo service in the Miami-Ecuador market. This frequency allocation is subject to the condition that the frequencies will expire and revert automatically to the Department if not used for a period of 90 days.

4. We reissue the certificates previously issued to Arrow Air, Inc., by Orders 95-6-39 and 96-10-2 in the attached form to reflect:

- (a) the transfer of all non-duplicative certificate authority currently contained in the certificate issued to Fine Air Services, Inc., for Route 644;
- (b) the removal of the passenger authority contained therein; and
- (c) the use of the trade names "Arrow Air" and "Fine Air."¹⁸

5. To the extent not transferred by the foregoing ordering paragraphs, we cancel all other certificate and exemption authority previously issued to Fine Air Services, Inc.⁹

¹⁶ The exemption authority to serve Guayaquil and Quito, Ecuador, from Miami granted to Fine Air by Notice of Action Taken dated March 24, 2000 (Docket OST-96-1039) is duplicative of exemption authority held by Arrow and will not be transferred. All other exemption authority held by Fine Air is duplicative of authority contained in Arrow's certificate for Route 343F and will not be transferred.

¹⁷ Fine filed a timely application for renewal of this authority on June 13, 2000. Since Arrow already holds exemption authority to serve Caracas and Maracaibo, we need not transfer that duplicative authority of Fine for these points to Arrow.

¹⁸ Consistent with the policy stated in Order 99-12-7, page 5, the reissued foreign certificate will provide the carrier with the maximum operating flexibility possible. Therefore, where Arrow's current certificate permits service only between St. Maarten and Curacao, the reissued certificate will authorize service to any point in the Netherlands Antilles, and the authority to serve Shannon, Ireland will be reissued as authority to serve Ireland.

¹⁹ This includes the certificate issued to Fine Air by Order 99-12-7 for Route 644, as all non-duplicative authority contained therein has been transferred to Arrow's authority for Route 343F. In addition, the authority contained in the interstate and foreign charter certificates issued to Fine Air Services, Inc., by Order 97-7-30 is redundant to authority contained in the scheduled interstate and foreign certificates held by Arrow, and is therefore cancelled. Under

6. Should Arrow Air, Inc., propose to operate more than 32 aircraft, we direct it to notify the Department in writing at least 45 days prior to the proposed operation and demonstrate its fitness to conduct such operations before their commencement.

7. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order and the attached certificates shall become effective upon the 61st day after its submission for section 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 does not intend to disapprove the Department's order under that section, whichever occurs earlier.²⁰

8. We will serve a copy of this order on the persons listed in Attachment A.

By:

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

(SEAL)

the Department's rules (14 CFR 212.1), a carrier holding either interstate or foreign scheduled certificate authority automatically possesses worldwide charter authority and, hence, a separate certificate for charter operations is unnecessary.

²⁰ This order was submitted for Section 41307 review on July 27, 2000. On August 4, 2000, 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.



Certificate of Public Convenience and Necessity
for
Interstate Air Transportation

(as reissued)

This Certifies That

ARROW AIR, INC.
d/b/a FINE AIR
d/b/a ARROW AIR

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 property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

Issued by Order 2000-8-5
On July 27, 2000
Effective on August 4, 2000

A. Bradley Mims
Acting Assistant Secretary for
Aviation and International Affairs



Terms, Conditions, and Limitations

ARROW AIR, INC.
d/b/a FINE AIR
d/b/a ARROW AIR

is authorized to engage in interstate air transportation of 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 is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).*
- (3) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.*
- (4) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (5) 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.*
- (6) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(f)), it must first comply with the requirements of 14 CFR 204.5.*

**This certificate is being reissued to reflect the removal of the restricted passenger authority previously contained herein and the addition of trade names that resulted from the merger of Fine Air Services, Inc., into the holder.*

(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 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.



Certificate of Public Convenience and Necessity
for
Foreign Air Transportation

Route 343f
(as reissued)

This Certifies That

ARROW AIR, INC.
d/b/a FINE AIR
d/b/a ARROW AIR

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 air transportation of property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

Issued by Order 2000-8-5
On July 27, 2000
Effective on August 4, 2000

A. Bradley Mims
Acting Assistant Secretary for
Aviation and International Affairs

**As reissued
by Order 2000-8-5
Attachment*



Terms, Conditions, and Limitations

ARROW AIR, INC.
d/b/a FINE AIR
d/b/a ARROW AIR

is authorized to engage in foreign air transportation of property and mail between a point or points in the United States and:

<i>Albania</i>	<i>Greece</i>
<i>Antigua and Barbuda</i>	<i>Grenada</i>
<i>Armenia</i>	<i>Guadeloupe</i>
<i>Aruba</i>	<i>Guatemala</i>
<i>Azerbaijan</i>	<i>Guyana</i>
<i>Bahamas Islands, the</i>	<i>Haiti</i>
<i>Barbados</i>	<i>Honduras</i>
<i>Belarus</i>	<i>Hungary</i>
<i>Belgium</i>	<i>Iceland</i>
<i>Belize</i>	<i>Ireland</i>
<i>Bolivia</i>	<i>Jamaica</i>
<i>Bosnia and Herzegovina</i>	<i>Jordan</i>
<i>Botswana</i>	<i>Kyrgyzstan</i>
<i>Bulgaria</i>	<i>Latvia</i>
<i>Chile</i>	<i>Lithuania</i>
<i>Colombia</i>	<i>Luxembourg</i>
<i>Congo, Democratic Republic of the</i>	<i>Macau</i>
<i>Costa Rica</i>	<i>Macedonia</i>
<i>Cote d'Ivoire</i>	<i>Malawi</i>
<i>Croatia</i>	<i>Malta</i>
<i>Czech Republic</i>	<i>Martinique</i>
<i>Dominican Republic</i>	<i>Moldova</i>
<i>El Salvador</i>	<i>Namibia</i>
<i>Estonia</i>	<i>Netherlands, the</i>
<i>Ethiopia</i>	<i>Netherlands Antilles</i>
<i>Georgia</i>	<i>New Zealand</i>
<i>Germany</i>	<i>Nicaragua</i>
<i>Ghana</i>	<i>Panama</i>

**This certificate is being reissued to reflect the removal of the restricted passenger authority previously contained herein, the addition of trade names that resulted from the merger of Fine Air Services, Inc., into the holder, and the transfer of all non-duplicative authority previously contained in Route 644 issued to Fine Air Services, Inc., by Order 99-12-7.*

Paraguay
 Qatar
 Slovakia
 Slovenia
 Spain
 St. Kitts
 Surinam
 Switzerland

Tajikistan
 Tanzania
 Trinidad and Tobago
 Turkmenistan
 Uganda
 Uruguay
 Uzbekistan

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 is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).*
- (3) *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 order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights and has notified the foreign country(ies) involved that any such selected carrier(s) has the required authority. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.*
- (4) *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.*
- (5) *The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all FAA requirements concerning security.*
- (6) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 10102(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) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(f)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder 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.

(10) The holder may combine services on this certificate with all services authorized by other Department certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in the holder's authority by virtue of the route integration authority granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This certificate shall become effective on August 4, 2000.



Experimental Certificate
of Public Convenience and Necessity
for
Foreign Air Transportation

Route 710
(as reissued)

This Certifies That

ARROW AIR, INC.
d/b/a FINE AIR
d/b/a ARROW AIR

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 air transportation of property and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

*Issued by Order 2000-8-5
On July 27, 2000
Effective on October 2, 1996*

*A. Bradley Mims
Acting Assistant Secretary for
Aviation and International Affairs*



Terms, Conditions, and Limitations

**ARROW AIR, INC.
d/b/a FINE AIR
d/b/a ARROW AIR**

is authorized to engage in foreign air transportation of property and mail:

Between the coterminal points Houston, Texas, and Miami, Florida; and the coterminal points Lima and Iquitos, Peru.

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 is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).

(3) 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 order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights and has notified the foreign country(ies) involved that any such selected carrier(s) has the required authority. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.

(4) 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.

**This certificate is being reissued to reflect the addition of trade names that resulted from the merger of Fine Air Services, Inc., into the holder.*

(5) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all FAA requirements concerning security.

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

(9) In the event that the holder 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.

(10) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results, will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative or low-priced air transportation it proposed in its application for authority.

(11) The holder may combine services on this certificate with all services authorized by other Department certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in the holder's authority by virtue of the route integration authority granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This certificate became effective October 2, 1996. It shall continue in effect until five years after its effective date unless the Department of Transportation earlier suspends, modifies, or deletes the authority.

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