

Order 2000-11-15
Served: November 15, 2000



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

Issued by the Department of Transportation
on the 14th day of November, 2000

Application of

FALCON AIR EXPRESS, INC.

for an exemption from the provisions of its interstate and
foreign passenger certificates

Docket OST-00-7916 - 4

In the matter of the reissuance of the interstate and foreign
passenger charter certificates of

FALCON AIR EXPRESS, INC.

Dockets OST-95-676 - 28
OST-95-677 - 32

**ORDER GRANTING EXEMPTION
AND
REISSUING CERTIFICATES**

Summary

By this order, we (1) grant Falcon Air Express, Inc. (Falcon) an exemption from the conditions of its certificates of public convenience and necessity to authorize the carrier to add two aircraft to its fleet, and (2) reissue Falcon's interstate and foreign passenger charter certificates to remove the fleet limitation restrictions contained therein.

Background

Falcon holds certificates authorizing it to provide interstate and foreign charter passenger air transportation.¹ In issuing those certificates, the Department required that, if Falcon wanted to expand its operations beyond the one aircraft proposed at that time, it must first have its fitness to do so redetermined. Subsequently, at the carrier's request, we have authorized it to expand its fleet to the four B-727 aircraft it currently operates.²

¹ See Order 96-4-32, served April 16, 1996.

² See Orders 97-2-5 issued February 10, 1997, and 97-10-6, issued October 7, 1997.

On September 11, 2000, Falcon filed an application in Docket OST-00-7916 requesting authority to add another two aircraft to its fleet. In this connection, the company advises that it intends to use these two additional aircraft to provide sub-service flights between the U.S. and Venezuela for Aeropostal Alas de Venezuela, C.A. (Aeropostal).³ Falcon states that it has made arrangements to lease the two additional aircraft and is hiring and training needed additional operational personnel. The company further advises that the terms of its arrangements with Aeropostal, including initial deposits and minimum operational guarantees, should provide the carrier with sufficient revenues to cover the operating expenses for the two aircraft.

Accompanying Falcon's application was updated fitness information. The carrier advises that it has recently created a new Chief Operating Officer position to oversee its expanding operations and that it has also replaced several of its other key management or technical personnel since its fitness was last reviewed.⁴ The financial documents provided by the carrier show that Falcon, whose initial air carrier operations were profitable, has become unprofitable, and that its financial position has declined over the past year or so.

No objections to the application were received.

Decision

We have contacted the FAA about Falcon's proposed fleet expansion and been advised that that agency is working with the carrier to add the aircraft to Falcon's FAA operating certificate. While the carrier's current weak financial position is of some concern to us, we note that the company has received an advance payment from Aeropostal which Falcon states will cover the costs of initiating its services with the two additional aircraft, and we would expect that the guarantees in Falcon's contract with Aeropostal should provide sufficient funds to cover Falcon's expenses under the contract. Moreover, the additional revenues from this operation should help improve the carrier's overall financial position.

In light of the above, we find that it is in the public interest to allow Falcon to increase its fleet to a maximum of six aircraft, subject to its compliance with all relevant FAA requirements and the receipt of appropriate FAA operating authority.

³ Falcon notes that the Federal Aviation Administration (FAA) has classified Venezuela as a "Category II" country, requiring Aeropostal to wet lease its aircraft from a qualified U.S. air carrier to conduct its U.S.-Venezuela services. Falcon has been providing other wet lease services for Aeropostal and has applied for and received approval from the Department to enter into its planned long-term wet lease arrangement with that carrier.

⁴ Falcon's personnel changes include Robert Mencil, Chief Operating Officer; Robert Coile, Vice President, Finance; Karen Averill, Vice President, Human Resources; Stanley Midnight, Vice President, Operations/Director of Operations; William Swope, Director of Maintenance; and Rafael Chirino, Director of Training. The company has provided resumes for these individuals, our review of which indicates that they are qualified for their respective positions.

In a related matter, we are taking this opportunity to reissue Falcon's interstate and foreign certificates to remove the one-aircraft restrictions contained therein.⁵ We have already authorized the carrier by exemption to operate four aircraft, and by this order we are authorizing it to add another two aircraft to its fleet. Thus, the one-aircraft restriction contained in Falcon's current certificates is now outdated. Instead, so that we can continue to monitor the carrier's fitness should it wish to expand its operations further, we will impose a reporting requirement similar to that imposed on other new entrant carriers,⁶ directing Falcon to advise us at least 45 days prior to any planned expansion of its operations beyond six aircraft and to demonstrate its fitness to operate such aircraft prior to the commencement of such expanded operations. This change will alleviate the need for Falcon to file exemption requests whenever it wishes to expand its fleet of aircraft.

ACCORDINGLY, Acting under authority assigned by the Department in its regulations, 14 CFR 385.12:

1. We grant Falcon Air Express, Inc., an exemption from the terms and conditions of its certificates of public convenience and necessity to the extent necessary to add two aircraft to its aircraft fleet, bringing the total aircraft authorized to six.
2. We reissue the interstate and foreign charter air transportation certificates issued to Falcon Air Express, Inc., by Order 96-4-32, in the attached form and subject to the Terms, Conditions, and Limitations attached thereto.⁷
3. The exemption granted here may be amended or revoked at any time without notice or hearing.
4. We direct that, should Falcon Air Express, Inc., propose to operate more than six aircraft, it must first notify the Department in writing at least 45 days prior to the proposed expansion and demonstrate its fitness to conduct such operations before their commencement.⁸
5. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

⁵ Specifically, this refers to paragraph (6) of the Terms, Conditions, and Limitations, attached to the interstate charter certificate, and paragraph (7) of the Terms, Conditions, and Limitations, attached to the foreign charter certificate.

⁶ See, e.g., Orders 97-10-22, 97-11-34, and 97-12-18.

⁷ In addition to removing the outdated one-aircraft limitation, the reissued certificates also reflect the current format now used in such certificates.

⁸ This notice shall be submitted to the Air Carrier Fitness Division. The carrier may contact the Fitness Division prior to submitting this notice to determine what information must be provided.

The action taken in this order is effective immediately and the filing of a petition for review shall not alter its effectiveness.

By:

RANDALL D. BENNETT
Acting Director
Office of Aviation Analysis

(SEAL)

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



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

This Certifies That

FALCON AIR EXPRESS, INC.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate charter air transportation of persons, property, and mail.

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

By Direction of the Secretary

*Issued by Order 2000-11-15
On November 14, 2000
Effective on November 15, 2000*

*Randall D. Bennett
Acting Director
Office of Aviation Analysis*



Terms, Conditions, and Limitations

FALCON AIR EXPRESS, INC.

is authorized to engage in interstate charter air transportation of persons, property and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*
- (2) The holder's authority 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.*
- (3) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (4) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.*
- (5) The holder is not authorized to engage in air transportation operations between points within the State of Alaska.*
- (6) 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.*

**This certificate is being reissued to reflect the removal of paragraph (6) limiting the holder's authority to the operation of one aircraft and to reflect the current format for such certificates.*

(7) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under all certificates held 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 Charter Air Transportation**

This Certifies That

FALCON AIR EXPRESS, INC.

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 charter air transportation of persons, property, and mail.

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

By Direction of the Secretary

*Issued by Order 2000-11-15
On November 14, 2000
Effective on November 15, 2000*

*Randall D. Bennett
Acting Director
Office of Aviation Analysis*

Attachment
*As reissued by Order
2000-11-15



Terms, Conditions, and Limitations

FALCON AIR EXPRESS, INC.

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

Between any place in the United States and any place outside thereof.

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 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 orders of the Department of Transportation issued under them or for the purpose of requiring compliance with them.*
- (3) 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.*
- (4) 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.*
- (5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*

**This certificate is being reissued to reflect the removal of former paragraph (7) limiting the holder's operations to one aircraft and to reflect the current format for such certificates.*

(6) *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.*

(7) *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.*

(8) *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.*

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