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ORDER 2000-11-22

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

Issued by the Department of Transportation
on the **17th day of November, 2000**

Joint application of **PARADISE ISLAND AIRLINES, INC.** **and** **POTOMAC AIR, INC.** for approval of a transfer of commuter authority under 49 U.S.C. 41105	**Served: November 20, 2000** **Docket OST-00-7920** — 7

ORDER TO SHOW CAUSE
PROPOSING TRANSFER OF COMMUTER AUTHORITY

Summary

By this order, we tentatively find (1) that Potomac Air, Inc. d/b/a US Airways Express (Potomac Air) is a citizen of the United States and is fit, willing, and able to conduct scheduled passenger air transportation as a commuter air carrier, and (2) that the commuter authority currently held by Paradise Island Airlines, Inc. (Paradise) should be transferred to Potomac Air.

Background

Paradise, a commuter air carrier based in Florida was found fit to conduct scheduled passenger operations in November 1981 by Order 81-11-60.[1] The company engaged in commuter operations under this authority until it ceased all operations in May 1999.[2]

On August 24, 2000, Paradise became a wholly owned subsidiary of US Airways Group, Inc. (Group),[3] and on September 12, 2000, Potomac Air, a newly created subsidiary of Group, and

[1] At that time, the company was known as Chalk's International Airlines, Inc.

[2] At the time it ceased all operations, Paradise was wholly owned by G-Air Holdings Corp., also the owner of Gulfstream International Airlines, Inc., and operated 50-seat DeHavilland Dash 7 aircraft principally between points in Florida and the Bahamas.

Paradise filed a joint application requesting that the Department approve the transfer of the commuter authority held by Paradise to Potomac Air. The applicants state that, upon approval of the transfer, Potomac Air intends to recommence the commuter operations conducted previously by Paradise. However, these operations will not be of the same nature and scope as those previously provided by Paradise. Instead, the operations of Potomac Air will be provided under the US Airways Express umbrella and consist of short-haul services in the Northeast and Mid-Atlantic regions of the United States utilizing up to eight 37-seat Dash-8 aircraft during the first year. Moreover, if the currently planned merger of US Airways and United Airlines is consummated, Potomac Air will be sold to Mr. Robert Johnson and will become DC Air.

On October 3, 2000, an answer to the transfer application was filed by AirTran Airways, Inc. In its answer, AirTran notes that (1) upon consummation of the US Airways/United merger, Group's plans are to transfer Potomac Air's authority to DC Air, an entity whose operations would be significantly different from those being proposed by Potomac Air; (2) since all of Potomac Air's key qualifying personnel would be either shared with or transferred from sister companies, its creation could weaken those related companies; and (3) because Potomac Air will not offer the public any air services that Group's four other air carriers cannot now provide, grant of the application will provide no public benefits but will impose on the Department the additional resource burden of monitoring another US Airways Express carrier that will merely substitute its services in selected markets for those currently provided by its related air carriers. AirTran asks that, if we approve the current transfer application, the Department make clear that the record here will not serve the purpose of pre-qualifying DC Air for its intended operations.

On October 17, 2000, the joint applicants filed a response to AirTran's answer. In this response, they state that the creation of Potomac Air is an essential step in the planned merger of US Airways with United;[4] that Potomac Air will operate as a stand-alone carrier into the indefinite future regardless of the outcome of the proposed merger; that Potomac Air is fit to provide the services set forth in the application;[5] and that DC Air will establish its fitness for its proposed operations at the appropriate time and that the entire process will be completely transparent.

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[4] The applicants argue that the US Airways/United merger, including the creation of DC Air, will provide important public benefits. As noted elsewhere in this order, we have not considered such arguments in deciding this case. The competitive issues raised by the proposed merger are being evaluated separately.

[5] In answer to the questions raised by AirTran regarding the adequacy of Potomac Air's management and the impact of Potomac Air's creation on the managerial fitness of its related US Airways Express affiliates, Potomac Air notes that the Department has previously awarded authority to applicants whose president also held similar positions with other entities, and that the key technical personnel noted in its application are all full-time employees whose departures from other Group carriers has not weakened those carriers because, where necessary, another fully qualified person has filled their positions at those carriers. Potomac Air further notes that, where necessary, these changes have been coordinated with the appropriate local FAA Flight Standards District Offices.

We have considered the points raised by AirTran's answer and the applicants' response. While we agree with AirTran that the creation of a new air carrier, be it independent or an affiliate of another carrier, increases our monitoring burden, it has never been our policy to evaluate the potential public benefits to be derived from a new carrier against the regulatory burden imposed in the manner suggested by AirTran. The information before us indicates that, as currently structured, Potomac Air appears to be fit to conduct scheduled air transportation operations as a commuter air carrier.[6] Moreover, as discussed below, it appears that the proposed transfer meets the public interest standard typically applied to such cases. Therefore, we tentatively conclude that the requested transfer of Paradise's commuter authority to Potomac Air should be approved. We will, however, give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

PUBLIC INTEREST

Section 41105 of the Statute (49 U.S.C. 41105) permits the Department to approve a transfer of an air carrier's authority if it finds that the transfer is consistent with the public interest. The primary decisional criteria in determining the public interest are whether the acquiring entity is a U.S. citizen and will be fit to hold the authority being transferred.[7] 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.

After reviewing the applicants' pleadings and other data available to the Department, we believe that the proposed transfer warrants approval under the decisional criteria. Nothing in the record indicates that Potomac Air does not satisfy the U.S. citizenship requirements of the Statute, nor that it will not be fit to conduct scheduled passenger operations as a commuter air carrier. Further, as Paradise has not conducted any operations for over a year, nor does it intend to do so in the future, approval of the proposed transfer will not have any negative impact on the viability of Paradise as an air carrier. Moreover, as no international certificate authority is at issue, there will be no impact on the trade position of the United States in the international air transportation market. The only question that then remains is the impact the proposed transfer will have on competition in the domestic airline industry. While the proposed transfer of authority is being sought in order to establish a stand-alone entity that

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[6] Our findings with respect to Potomac Air's fitness should in no way be taken as a pre-judgment of the fitness of DC Air. As more fully discussed in the **COMMUTER AUTHORIZATION CONDITIONS AND LIMITATIONS** section of this order, if a change in Potomac Air's ownership is proposed, the company will need to file advance notice of this change, together with related fitness information. As in all cases involving such substantial changes, we will evaluate the continuing fitness of the company to conduct the operations authorized and, if the information does not support a positive fitness finding, we will not hesitate to take action to suspend, modify, or revoke the company's authority.

[7] *See* Federal Express, Order 89-3-21, p7.

would be sold should the US Airways/United merger ultimately take place, by itself the proposed transfer can not be judged as having a negative impact on competition. The services to be conducted by Potomac Air are already being provided by other affiliates of US Airways and these carriers will continue to operate in other markets even after Potomac Air commences commuter operations. Therefore, after a careful review of the transfer application and the answer of AirTran, we have tentatively concluded that the transfer of Paradise's commuter authority to Potomac Air meets the public interest criteria of the Statute. However, our finding here should in no way be taken as a finding on the merits of the proposed US Airways/United merger. That transaction is, and remains, subject to separate regulatory review.

FITNESS

In determining the fitness of an air carrier to receive or hold commuter authority we use a three-part test: (1) whether the applicant will have the managerial skills and technical ability to conduct the proposed operations, (2) whether it will have access to financial resources sufficient to commence and conduct scheduled passenger operations without posing an undue risk to consumers, and (3) whether it will have the disposition to comply with the Statute and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen. Thus, in order to receive the commuter authority currently held by Paradise, Potomac Air must be found to be fit and a U.S. citizen.

Ownership and Management

At present, both Paradise and Potomac Air are wholly owned by Group. While the applicants anticipate that Potomac Air will be sold to Mr. Robert Johnson at some future date, there will be no immediate change in the ownership of Potomac Air as a result of the proposed transfer. In addition, the management and key technical personnel currently with Potomac Air have all held similar positions with various affiliates of Group and appear well qualified to hold their noted positions with Potomac Air.

The Board of Directors of Potomac Air is comprised of Mr. Gregory Taylor, Mr. N. Bruce Ashby, Mr. Thomas Mutryn, Mr. Thomas Hanley, Mr. Jeffery A. McDougle, and Ms. Jennifer McGarey. Each of these individuals also currently serves on the Board of Group and/or US Airways. In addition, Mr. Ashby is the Acting President of DC Air.

Mr. John Leonard currently serves as President of both Piedmont and Potomac Air and will continue to do so even after Potomac Air commences operations.[8] Mr. Leonard has stated that he will divide his time between his duties with both carriers, spending approximately 75 percent of his time overseeing Potomac Air's operations and the remainder of his time overseeing the operations of Piedmont. Mr. Leonard has a long history in air carrier management, having first served as Treasurer, Vice President, and President of Ransome Airlines, a commuter air carrier that conducted code-share operations on behalf of US Airways and Delta between 1967 and 1986. In 1986, Pan American Airways purchased Ransome and the carrier became Pan Am Express with Mr. Leonard serving as its President and Chief

[8] However, if Potomac Air becomes DC Air, Mr. Leonard will resign his position with Potomac Air.

Executive Officer until 1989. From that time until he joined Piedmont in his current position in March 1990, Mr. Leonard served as Executive Vice President and Chief Operating Officer of Business Express.

Mr. Richard H. Gwin, an Airframe and Powerplant mechanic, currently serves as Vice President and Director of Maintenance of Potomac Air. Previously, he was Vice President of Aircraft Maintenance & Engineering at Piedmont for approximately two years. Prior to joining the US Airways' family of carriers, Mr. Gwin worked for brief periods in senior maintenance management positions with American International Airways (1997) and Northwest Airlines (1997-1998), and for over 31 years in various maintenance positions with TWA (1966-1997), ending as TWA's Director of Maintenance Operations.

Mr. Jerome A. Wood, an Airframe and Powerplant mechanic, serves as Potomac Air's Chief Inspector. Mr. Wood began his career in 1965 serving as an aircraft mechanic in the United States Air Force. In 1968, he left the service and began his 30-year career in civilian aviation. During this career, he has held mechanic positions with various air carriers and aircraft maintenance facilities, most notably with Ransome Airlines where he spent 19 years (1972-1991), first as a lead mechanic and later as its Chief Inspector, Repair Station Manager, and Maintenance Director. From 1991-1998, Mr. Wood served as Director of Maintenance for Summit Aviation, an FAA-approved aircraft repair and modification facility. He joined the US Airways' family in January 1999 as a maintenance supervisor with US Airways, after having served briefly as a maintenance representative at World Airways.

Mr. Robert T. Brayton, an Airline Transport Pilot, serves as Potomac Air's Vice President and Director of Operations. He began his aviation career in 1986 as a pilot with Continental Express. In 1990, he became its Chief Pilot; in 1992, he became the carrier's Director of Flight Operations; and in 1994, he became its Vice President of Flight Operations. After leaving Continental Express in 1998, Mr. Brayton served briefly as Vice President of Operations for Virgin Express Airlines in Brussels and as a consultant and Assistant Director of Operations for Mesa Air Group. He joined the US Airways' family in October 1999 as Vice President of Operations at Allegheny Airlines.

Potomac Air's Chief Pilot is Mr. Ronald Houff, an Airline Transport Pilot, with 24 years of aviation experience. Mr. Houff has been a member of the US Airways' family since 1986 when he joined Piedmont as a pilot and, from 1991-1998, he served as its Chief Pilot. Prior to joining Piedmont, Mr. Houff served as a corporate Chief Pilot for Augusta Aviation Corporation (1964-1967) and Chatam Manufacturing Company (1967-1973), as well as Director of Operations for Appalachian Flying Service (1985-1986).[9]

Mr. James P. Harkema, a certified aircraft dispatcher, serves as Vice President/Director of Safety for Potomac Air. He began his aviation career in 1989 as an aircraft dispatcher with Braniff Airlines. In 1990, he joined PSA Airlines as a crew scheduler and since that time has

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[9] Between 1973 and 1985, Mr. Houff held non-aviation positions.

held increasingly responsible positions with that carrier, serving as its Manager of Systems Control from 1994-1995 and as its Director of Safety from 1995-2000.

Mr. William H. Harrison, until recently the Division Controller for the US Airways Express group, serves as Potomac Air's Director of Finance. In addition to his controller experience, Mr. Harrison has also worked as a senior financial analyst with US Airways (1990-1994).[10]

All of the individuals noted above are experienced in overseeing operations of the same type that will be conducted by Potomac Air. Moreover, with the exception of its President, Mr. Leonard, all of these individuals are full-time employees of Potomac Air. While Mr. Leonard will not devote all of his time to overseeing the operations of Potomac Air, he has a long-history of serving in similar positions with other, much larger, air carriers. Further, nothing in the record would indicate that Potomac Air will lack sufficient managerial oversight. The Department has previously authorized the "sharing" of highly experienced senior management personnel at this level when the carriers involved were closely related.[11] Therefore, we tentatively conclude that Potomac Air has demonstrated that it currently possesses the management skills and technical ability to conduct the commuter operations proposed.[12] [13]

Operating Plans and Financial Condition

If it receives the commuter authority at issue, Potomac Air intends to commence scheduled passenger operations as a US Airways Express carrier in the eastern United States. Its first-year plans call for its operations to be based at Ronald Reagan Washington National Airport (DCA) and to consist of regional short-haul services from DCA to points including Allentown, Baltimore, Charleston, Charlotte, Clarksburg, Greensboro, Greenville/Spartanburg, Knoxville, Lewisburg/Greenbrier, Morgantown, Philadelphia, Pittsburgh, Richmond, Roanoke, and

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10 Mr. Harrison received a Masters of Business Administration in 1990. Prior to this time, he did not hold any positions in the airline financial field.

11 *See*, for example, Order 2000-1-25 (Atlantic Coast Jet) and Order 2000-9-17 (Boston-Maine Airways). While AirTran has raised a legitimate concern over the impact Mr. Leonard's devotion of time to Potomac Air will have on his ability to oversee Piedmont Airlines' operations, the applicant has noted that oversight of the day-to-day operations of Piedmont will be the direct responsibility of Mr. Stephen Farrow, an individual who is also highly experienced and familiar with Piedmont's current operations, having served for 15 years as its Vice President of Flight Operations.

12 Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the applicant'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.

13 AirTran also questioned the continued fitness of Potomac Air's sister air carriers given the fact that Potomac Air's managerial and key technical personnel were previously employed by these sister companies in similar positions. To the extent that some of the noted individuals held key technical positions at these companies, they have been replaced by other qualified persons. Further, no one related company has undergone substantial changes in its key technical personnel team as the result of the creation of Potomac Air.

White Plains. Initially, it will use two 37-seat Dash 8s and add up to six more such aircraft by the end of its first year of operations.[14]

Potomac Air has forecast that its total start-up expenses for these operations will be $7.8 million, some of which have already been paid, and its first year operating expenses will be approximately $36.1 million. Under the Department's standard fitness criteria, Potomac Air would need to demonstrate access to 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 "normal" commuter operations. Moreover, in calculating available resources, recognition of projected revenues is generally not permitted. However, in this case, because the operations at issue will be provided under a service agreement between Potomac Air and its sister corporation, US Airways, and under this agreement Potomac Air will be paid a flat per available seat mile fee with US Airways collecting all passenger revenues and assuming all responsibility to consumers for any reimbursement of funds if the services are not received, the Department's working capital reserve requirement is not necessary.[15] Group, the parent of both US Airways and Potomac Air, has stated that it will provide all funding for the expenses incurred in Potomac Air's start-up. At present, Group's current budget for these expenses is $7.5 million.[16] Therefore, based on our review of the service agreement between US Airways and Potomac Air and the intent of Group to support Potomac Air's start-up, we tentatively conclude that Potomac Air will have adequate financial resources to commence its proposed scheduled passenger operations without posing an undue risk to consumers or their funds.

Compliance Disposition

We also tentatively conclude that Potomac Air will have the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel will conform to applicable safety standards and that acceptable consumer relations practices will be followed.

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14 These Dash 8s are currently being operated by Piedmont and will be leased from that carrier and/or Wilmington Trust. These aircraft will no longer be needed by Piedmont due to its planned delivery of larger Dash 8 equipment during the next year.

15 We also note that the operations at issue will not represent new US Airways Express operations. Rather, the services in the markets at issue will be reassigned from one of Potomac Air's sister corporations to it upon its receipt of commuter authority.

16 Group's consolidated balance sheet as of June 30, 2000, reflects current assets of $2.3 billion and current liabilities of $2.9 billion, giving the company a negative working capital position of approximately $600.0 million and a current assets to current liabilities ratio of 0.79:1. In addition, as of June 30, 2000, Group's stockholders' equity position was a negative $245.0 million. Despite its current negative working capital and stockholders' equity situation, we have no reason to conclude that Group will not be able to provide the financial support pledged to Potomac Air. Indeed, the operating activities of Group and its subsidiaries provided it with a net cash flow of $603 million during calendar year 1999 and $517 million during the first six months of calendar year 2000.

Potomac Air has stated that there are no actions or outstanding judgments against it or its key personnel. Further, none of these parties are the subject of any current charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations, or other legal action.

In addition, there is nothing in the compliance history of US Airways or its Express affiliates that would indicate that Potomac Air, under the same ownership and control, would likely fail to perform its operations in a satisfactory manner.

Finally, the FAA has advised us that Potomac Air has applied for reactivation of the Part 121 certificate held by Paradise Island, that that process is progressing normally, and that it knows of no reason why we should act unfavorably on the subject transfer application.

CITIZENSHIP

49 U.S.C. 41102 requires that authority 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.

As stated earlier, both Paradise and Potomac Air are currently wholly owned by US Airways Group.[17] We have previously found US Airways and related air carriers to be U.S. citizens under this same ownership. Further, all of the individuals who hold key management positions with Potomac Air are U.S. citizens and the company has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute. Finally, our review of the applicant's citizenship has uncovered no reason to suggest that control of Potomac Air would rest with non-U.S. citizens should we approve the requested transfer of commuter authority.

In view of the foregoing, we tentatively conclude that Potomac Air is a U.S. citizen and is fit, willing, and able to provide scheduled passenger operations as a commuter air carrier.

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[17] Group itself is a publicly traded company whose stock is widely dispersed. As of August 21, 2000, the only individuals or companies which held more than a five percent voting interest in Group were Salomon Smith Barney Holdings/Citigroup (5.1 percent), Morgan Stanley Dean Witter (6.3 percent), and Tiger Management/Julian Robertson (24.6 percent). In addition, 20 directors and officers of Group together held a total interest of 6.9 percent, with most of these shares held by Group's Chief Executive Officer, Mr. Rakesh Gangwal (2.3 percent) and its Chairman, Mr. Stephen Wolf (3.3 percent).

OBJECTIONS

We will give interested persons 14 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 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. 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. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Potomac Air's fitness and the requested transfer of commuter authority.

COMMUTER AUTHORIZATION CONDITIONS AND LIMITATIONS

If Potomac Air receives the commuter authority at issue, its authority will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its Commuter Air Carrier Authorization. Among other things, this includes our receipt of evidence that Potomac Air has been authorized by the FAA to engage in the subject operations.[18]

Our fitness findings stated above are based solely on our evaluation of Potomac Air's ability to conduct the scheduled passenger operations proposed as a commuter air carrier under its current ownership. While we are aware that it is the intention of Group to sell Potomac Air to Mr. Robert Johnson, who would then operate it as DC Air utilizing various assets transferred from US Airways, nothing in the instant application would allow us to evaluate the company's fitness if such a substantial change were to occur. Therefore, we remind Potomac Air that it has an obligation to report proposed substantial changes in its operations, ownership, or management to

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[18] We also remind Potomac Air about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the commuter 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 operations for which it was found fit and subsequently ceases such operations, it may not resume such 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.

the Department.[19] This obligation includes providing a 30-day advance notification of any proposed change in ownership.[20]

In addition, our evaluation of Potomac Air's fitness is based solely on its ability to conduct commuter operations using aircraft having a maximum capacity of 60 passenger seats. Should Potomac Air wish to operate larger aircraft, it will need to file an application for a certificate under section 41102.

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue an order (1) finding that Potomac Air, Inc. d/b/a US Airways Express is a U.S. citizen and is fit, willing, and able to engage in scheduled passenger operations as a commuter air carrier, and (2) transferring to it the commuter authority currently held by Paradise Island Airlines, Inc., 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 transfer of commuter authority set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Washington, D.C. 20590, in Docket OST-00-7920, 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 no timely and properly supported 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 transfer to Potomac Air, Inc. d/b/a US Airways Express the commuter authority issued to Paradise Island Airlines.[21]

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

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[19] Section 41110(e) requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. Thus, should Potomac Air propose substantial changes in areas affecting its fitness, it must first comply with the requirements of section 204.5 of our rules. The compliance of the company with this requirement is essential if we are to carry out our responsibilities under the Statute.

[20] 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 carrier fails to file this updated 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 authority.

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

5. We will publish a summary of this order in the Federal Register.

By:

FRANCISCO J. SANCHEZ
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

Attachment

SPECIMEN

Terms, Conditions, and Limitations

POTOMAC AIR, INC.
d/b/a US AIRWAYS EXPRESS

is authorized to engage in scheduled passenger air transportation operations as a commuter air carrier.

This authority is subject to the following provisions:

(1) The authority to conduct scheduled passenger operations 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, 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 scheduled passenger operations, 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 requirements of 14 CFR Part 298 and any other regulations prescribed by the Department of Transportation for the services authorized here, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(4) The holder may not operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

(5) The holder's authority is effective only to the extent that such operations are also authorized by the 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 this authority 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 authority.

(8) The holder shall maintain in effect at all times with the Department of Transportation current information on OST Registration Form 4507.

(9) 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.*

(10) 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.

(11) In the event that the holder does not commence actual flying operations as a commuter air carrier under this authority within one year of the date of the Department's determination of its fitness, its commuter authority shall be revoked for dormancy. Further, in the event that the holder commences but subsequently ceases all scheduled passenger operations, the authority granted here 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 such operations within one year of its cessation, its commuter authority shall be revoked for dormancy.

Attachment A

SERVICE LIST FOR POTOMAC AIR, INC.
DOCKET OST-00-7920

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