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Order 2001-8-2

Served: August 7, 2001



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

Issued by the Department of Transportation
on the 2nd day of August, 2001

Joint application of

AIR NEVADA AIRLINES, INC.
d/b/a PACIFIC WINGS
and
PACIFIC WINGS, L.L.C.

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

Docket OST-01-9945 - 2

ORDER TRANSFERRING AND REISSUING CERTIFICATE

Summary

By this order, we (1) find that Pacific Wings, L.L.C. (Pacific Wings) is fit, willing, and able to conduct interstate scheduled passenger operations as a certificated air carrier, and (2) transfer and reissue to Pacific Wings the certificate authority currently held by Air Nevada Airlines, Inc. d/b/a Pacific Wings (Air Nevada), subject to various limitations.

Background

Air Nevada, a certificated air carrier now based in Kahului, Maui, started operation in 1974 as a Nevada-based air taxi operator. In 1979 it began commuter operations between Las Vegas and the Grand Canyon. The company was issued certificate authority in 1981.¹

Air Nevada's certificated operations were centered around the Las Vegas-Grand Canyon market for many years. In 1997, Air Nevada began limited intra-Hawaii operations under the "Pacific Wings" trade name, while maintaining its Nevada-based services as well. In early 1998, Air Nevada sold its Las Vegas-Grand Canyon marketing database and transferred all of its scheduled passenger operations to Hawaii. The carrier presently operates an average of 32 scheduled departures per day using five 8-seat Cessna 402C and one 3-seat Cessna 172P aircraft. Many of these operations are being conducted

¹ See Order 81-1-64, issued January 14, 1981.

under Essential Air Service (EAS) contracts for Hana (Maui), Kalaupapa (Molokai), and Kamuela (Hawaii).

In April 2000, Pacific Wings, a Nevada limited liability company, purchased all of the outstanding stock of Air Nevada and thus became its sole owner. Mr. R. Franklin Ford and Mr. James Gregory Kahlstorf, both U.S. citizens, own, respectively, 51 and 49 percent of Pacific Wing's outstanding stock.

On June 15, 2001, Air Nevada and Pacific Wings jointly filed an application in Docket OST-01-9945 seeking the Department's approval of the transfer and reissuance of the certificate authority held by Air Nevada to Pacific Wings pursuant to section 41105 of the Statute.

No answers opposing the transfer application were filed and no special issues regarding Pacific Wings have come to our attention. The information before us indicates that Pacific Wings is fit to conduct scheduled air transportation operations as a certificated air carrier. Moreover, as discussed below, it appears that the proposed transfer meets the public interest standard typically applied to such cases.

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 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 certificate authority.² 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 find that the proposed transaction warrants approval under the decisional criteria. We conclude, as more fully discussed below, that Pacific Wings is a U.S. citizen and that it is fit, willing, and able to conduct air transportation under the transferred authority, subject to certain conditions and limitations.

In addition, we find that approval of this transfer will not negatively impact competition in the domestic airline industry as the operations currently conducted by Air Nevada will be maintained by Pacific Wings. In addition, the issue of the impact on the trade position of the United States in the international air transportation market is irrelevant in this case since no foreign routes are at issue.

² See Arrow Air, Order 2000-8-5, and Kalitta Air, Order 2000-10-29.

FITNESS

In determining the fitness of an air carrier to receive or hold certificate 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 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 Air Nevada's certificate, Pacific Wings must be found to be fit and a U.S. citizen.

Ownership and Management

Pacific Wings was established as a limited liability company in April 2000 within the State of Nevada. As previously noted, Mr. R. Franklin Ford and Mr. James Gregory Kahlstorf, both U.S. citizens, are the only owners of Pacific Wings. Upon completion of the certificate transfer at issue here, all of Air Nevada's current senior management and key technical personnel team members will continue in the same positions with Pacific Wings.

Mr. R. Franklin Ford, an Airline Transport Pilot, serves as the carrier's Chief Executive Officer and Director of Operations. He joined Air Nevada in January 1997 as Vice President-Hawaii Division and Assistant Director of Operations. Prior to joining Air Nevada, he was employed as a tax manager and CPA for KPMG Peat Marwick in Honolulu (1985-1991), as Vice President and Treasurer of Hawaiian Securities & Realty (1991-1992), and as a flight instructor for American Pacific Air (1995-1997).³ After joining Air Nevada in January 1997, Mr. Ford spent part of that year at its Las Vegas headquarters flying the line and learning the operations for the sole purpose of starting the Hawaii division at the end of 1997. Since Air Nevada commenced operations in Hawaii, Mr. Ford has run those operations for the carrier.

Mr. James Gregory Kahlstorf joined Air Nevada in May 2000, and serves as the company's President. Prior to this, he was employed in various capacities in the data processing field including Passenger Information Data Technician at Republic Airlines (1980-1983), Production Control Supervisor at Salt River Project (1984-1987), Technical Support Manager at American Continental Corporation (1987-1992), Airline Software Development Manager at Reed Travel Group (1992-1994), and Information Technology Director at Strategic Systems, Inc. (1994-1998). Immediately before coming to Pacific Wings, he worked for three years with AMR's SABRE Group as a technology consultant to major airlines.

Mr. Bradley J. Kinkeade serves as the carrier's Vice-President/General Manager. In this position he oversees the airline's daily operations. In 1982, he started with Air

³ From 1992 through 1994, Mr. Ford ran his own accounting firm.

Nevada as a ramp agent and has held increasingly responsible positions, including Director of Flight Control and Vice President of Flight Control. Mr. Kinkeade has been a full-time employee of the carrier his entire professional career.

Mr. Ronald L. Mahan, the carrier's Chief Pilot, received his Airline Transport Pilot certificate in 1985 and has accumulated over 10,000 hours of commercial flight experience. His prior work experience includes tenures at various air carriers, including Evergreen International (1990-1991), Flagship Express (1991), and Emery Worldwide Airlines (1991-1993). Mr. Mahan joined Air Nevada in June 1999 as the carrier's Director of Operations. In addition to his work with Air Nevada, Mr. Mahan has been employed for the past five years as a DC-10 captain for the JAL Group, spending, on average, approximately 50 percent of his workweek with that carrier.

Mr. John A Sartor, an Airframe and Powerplant mechanic, has served as Air Nevada's Director of Maintenance since August 1998. He began his aviation career in 1970 working as a mechanic and shop foreman for a number of general aviation fixed-based operators. From 1982 to 1995, he worked for RAM Aircraft in the quality control department as Production Manager. Between 1995 and 1998, he worked for Baylor University as the University's Aircraft Maintenance Manager.

Given their depth of aviation industry experience, much of it with Air Nevada performing the same functions as they will for Pacific Wings, we conclude that Pacific Wings has demonstrated that it has the management skills and technical ability to conduct the operations authorized by the transferred certificate using small aircraft.⁴

Operating Plans and Financial Condition

Pacific Wings states that, if transfer of Air Nevada's certificate is approved, the company intends to continue operating the same level of scheduled passenger service currently being provided by Air Nevada utilizing the same fleet of aircraft. Air Nevada currently flies an average of 32 daily departures to destinations throughout the Hawaiian Islands, mostly to essential air service communities, using five 8-passenger seat Cessna 402Cs and one 3-passenger seat Cessna 172P. The carrier also offers 24-hour passenger and cargo services to a number of individual and corporate clients.

From the data provided in its application, Air Nevada appears to be in good financial condition. The company's statements show net income of \$105,679 for the year ended December 31, 2000, and \$61,837 for the first quarter of 2001. The company also states that, as of March 31, 2001, it had current assets of \$592,228 and current

⁴ 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. The FAA has already reviewed the qualifications of these individuals for their positions with Air Nevada and found them to be satisfactory.

liabilities of \$203,031 for a current ratio of 2.92:1, and its net equity position was a positive \$2,868,973. Further, Pacific Wings has no long-term debt or lease obligations. The company also maintains a \$30,000 line of credit with Bank of Hawaii to meet its working capital cash flow requirements.

In light of the foregoing, we conclude that Pacific Wings has available to it sufficient funds to enable it to continue providing the certificated operations currently operated by Air Nevada without posing an undue risk to consumers or their funds.

Compliance Disposition

Pacific Wings has stated that there are no actions or outstanding judgments against it or Air Nevada, its owners, or its key personnel, nor have there been any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations, or other legal action, against any of these parties. Further, there have been no formal complaints filed or orders issued finding any of these parties to be in violation of the Statute.

Pacific Wings states, however, that there is one FAA enforcement case currently open against Air Nevada. This case involves a discrepancy between the overhaul interval stated by its propeller manufacturer and the interval contained in Air Nevada's Operations Specifications. Although the possible fine for this alleged violation could be as high as \$10,000, the company believes that the case will be dismissed once the facts are known. Further, FAA states that it knows of no reason why we should act unfavorably on the subject transfer application.

After reviewing the compliance history of Air Nevada under its current ownership and management there does not appear to be anything that would indicate that Pacific Wings, under this same ownership and management, would likely fail to perform its operations in a satisfactory manner. We therefore conclude that Pacific Wings has the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.

CITIZENSHIP

49 U.S.C. 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section specifies that the president and two-thirds of the board of directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned and controlled by U.S. citizens. We have also interpreted the Statute to mean that, as a factual matter, U.S. citizens must actually control the carrier.

As noted earlier, Pacific Wings is owned by Messrs. Ford and Kahlstorf, who are both U.S. citizens. Further, all of the individuals who hold key management positions with

Pacific Wings are also 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 Pacific Wing's citizenship has uncovered no reason to suggest that control of the carrier would rest with non-U.S. citizens should we approve the requested transfer.

Based on the above, we conclude that Pacific Wings is a U.S. citizen and is fit, willing, and able to provide the interstate scheduled passenger operations authorized by Air Nevada's certificate using small aircraft.

CERTIFICATE CONDITIONS AND LIMITATIONS

We note that our finding of fitness for Pacific Wings is based on its continuing Air Nevada's current operations that use only small (under 9-seat) aircraft. Were Pacific Wings to propose to expand its operations to include larger aircraft, our fitness findings might no longer apply. Therefore, we propose to limit the transferred certificate authority to operations with aircraft under Part 135 of the Federal Aviation Regulations. Should Pacific Wings subsequently desire to operate aircraft for which a Part 121 certificate is required from the FAA, it must first be determined fit for such operations. This restriction is similar to restrictions imposed in other recent cases involving small aircraft operators.⁵

In addition, we remind the company of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. Thus, should Pacific Wings propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.⁶ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under the Statute.⁷

⁵ See Inland Aviation, Order 99-7-4, Daystar Airways, Orders 99-8-16 and 2001-5-29, and Venture Travel, Order 2000-12-10.

⁶ The carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. In addition, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the 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 certificate authority.

⁷ We also remind Pacific Wings about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) if the company ceases the operations for which it was found fit, it may not resume certificated operations unless its fitness has been redetermined; and (2) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

ACCORDINGLY:

1. We find that Pacific Wings, L.L.C., is fit, willing, and able to engage in certificated operations using small (Part 135) aircraft subject to the attached Terms, Conditions and Limitations.
2. We find that it is in the public interest to transfer to Pacific Wings, L.L.C., with amendments,⁸ the interstate scheduled air transportation certificate issued to Air Nevada Airlines, Inc. d/b/a Pacific Wings, by Order 98-11-2, served November 4, 1998;⁹ and we reissue the certificate in the attached form to reflect the transfer of authority.
3. We will serve a copy of this order on the persons listed in Attachment A.

By:

SUSAN McDERMOTT
Deputy Assistant Secretary
For Aviation and International Affairs

(SEAL)

*An electronic version is available on the World Wide Web at
<http://dms.dot.gov>*

⁸ The certificate currently held by Air Nevada does not contain a restriction on the size of aircraft that the holder may operate. However, for the reasons stated in the **Certificate Conditions & Limitations** section of this order, the transferred certificate will include an aircraft size limitation.

⁹ By Order 98-11-2, the Department amended and reissued the certificate authority issued previously to Air Nevada by Order 81-12-131.



Certificate of Public Convenience and Necessity
for
Interstate Air Transportation

[as reissued]

This Certifies That

PACIFIC WINGS, L.L.C.

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 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 2001-8-2

On August 2, 2001

Effective on August 7, 2001

Susan McDermott

Deputy Assistant Secretary for

Aviation and International Affairs

*As Reissued
by Order 2001-8*2
Attachment*



Terms, Conditions, and Limitations

PACIFIC WINGS, L.L.C.

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

This authority is subject to the following provisions:

- (1) The 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 limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulations. In the event that the holder wishes to institute operations that would require Part 121 certification from the FAA, it must first be determined fit for such operations.*
- (3) 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.*
- (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.*

* This certificate is being reissued to reflect (1) the transfer of authority from Air Nevada, Inc., to Pacific Wings, L.L.C., and a new aircraft size limitation on the holder's authority.

(6) *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.*

(7) *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.*

(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 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.*

Attachment A

LABELS FOR PACIFIC WINGS, L.L.C.

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