137103

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

Issued by the Department of Transportation on August 22, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST-2001-10210 – 3

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **YES Lineas Aéreas Charter** Date Filed: July 23, 2001

Relief requested: exemption from 49 U.S.C. § 41301 to engage in charter foreign air transportation of persons, property and mail (1) between any point or points in Portugal and any point or points in the United States; and (2) between any point or points in the United States and any point or points in a third country or countries.

If renewal, date and citation of last action: New authority
Applicant representative: William Karas (202) 429-6223
Responsive pleadings: None filed

DISPOSITION

Action: Approved Action date: August 22, 2001

Effective dates of authority granted: August 22, 2001-August 22, 2003
Basis for approval (bilateral agreement/reciprocity): United States-Portugal Air Transport Agreement
Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached)

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that YES is financially and operationally qualified to perform the services authorized above. We found that YES is substantially owned and effectively controlled by homeland nationals. Specifically, YES is owned by two Portuguese companies (TAP Air Portugal 51% and Agency Abreu 49%) and all of its directors and chief management personnel are citizens of Portugal. The carrier is properly licensed and designated by the Government of Portugal to perform the proposed services. By memorandum dated August 21, 2001, the FAA advised us that it knew of no reason why we should act unfavorably on YES' application.

The authority granted above is subject to the conditions of the United States-Portugal Agreement, including specifically the Transitional Provisions of Annex IV.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov//reports/reports_aviation.asp

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

(1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;

(2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;

(3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);

(4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;

(5) Conform to the airworthiness and airman competency requirements of its Government for international air services;

(6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;

(7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

(a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

(8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;

(9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;

(10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

(11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).