

Served: July 17, 2002



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

Issued by the Department of Transportation
on the 12th day of July, 2002

Application of

**ATLANTIC COAST JET, INC.
d/b/a DELTA CONNECTION**

Docket OST-1999-6249

for a waiver of the revocation-for-dormancy
provisions of 14 CFR 204.7

Application of

**ATLANTIC COAST JET, INC.
d/b/a DELTA CONNECTION**

Docket OST-2002-12569

for a disclaimer of jurisdiction over the transfer
of its certificate under 49 U.S.C. 41105

ORDER CONFIRMING ORAL ACTION

Summary

By this order, we (1) confirm our oral action of July 5, 2002, granting Atlantic Coast Jet, Inc. d/b/a/ Delta Connection (ACJ) a waiver from the revocation-for-dormancy provisions of section 204.7 of our rules (14 CFR 204.7) and (2) confirm our oral action of July 9, 2002, disclaiming jurisdiction over the transfer of ACJ's certificate to Atlantic Coast Jet, LLC (ACJ LLC).

Background

ACJ holds an interstate scheduled passenger certificate issued by Order 2000-8-9 on August 7, 2000. ACJ operated under that certificate until July 1, 2001, when all of its operations and aircraft were transferred to its sister company, Atlantic Coast Airlines, Inc. (ACA), another certificated air carrier. As a result of this suspension of operations, under section 204.7 of our rules, ACJ's authority to operate under its certificate was automatically suspended at that date. Also under section 204.7, ACJ had one year (in this case, until July 1, 2002) to have its fitness redetermined and resume operations. If it did not, its authority was subject to revocation for reason of dormancy at that time.

On June 12, 2002, ACJ filed an application in Docket OST-99-6249 requesting that the Department waive the one-year revocation-for-dormancy provisions of section 204.7 to the extent necessary to allow ACJ additional time to resume air carrier operations. In support of this request, ACJ states that its parent, Atlantic Coast Airlines Holdings, Inc. (ACAH) had intended to determine what action to take with respect to ACJ's certificate authority, including the possible resumption of operations, prior to the July 1, 2002, dormancy date. However, the events of September 11th and its aftermath diverted ACAH's attention to other, more pressing, issues; as a result, it requests additional time to determine what, if any, operations ACJ should offer in the future.

In a related matter, on June 24, 2002, ACJ filed an application in Docket OST-2002-12569 requesting that the Department disclaim jurisdiction over the transfer of its interstate scheduled passenger certificate to ACJ LLC, a new Delaware limited liability company,¹ and to reissue its certificate in the ACJ LLC name. In support of this request, ACJ states that the company is undertaking this corporate reorganization for corporate and tax-related reasons not related to any air transportation operations it may perform in the future. According to the applicant, as a result of the transfer, there will be no "change in the management, control, financial condition or citizenship" of the carrier. ACJ further argues that its disclaimer request is consistent with Department precedent in other similar corporate reorganizations.

Decision

On July 5, we granted ACJ a waiver from the revocation-for-dormancy provisions of section 204.7. We recognize that the events of September 11th impacted the planning and business of many airlines. While we might in other circumstances be hesitant to afford additional time to a carrier that had no specific plans to resume operations, as the company notes in its application, should it choose to resume operations, we have no reason to believe that, under its current ownership, ACJ would not have the managerial and financial resources needed to do so.²

Notwithstanding our decision to grant the carrier's extension request, we are not prepared to allow ACJ's certificate to remain dormant for an open-ended period of time. Therefore, we advised ACJ that we were granting the waiver for a period of six months (that is, until January 1, 2003). If the carrier does not have its fitness redetermined and resume operations under its certificate by that date, we intend to revoke its authority for dormancy at that time and without further notice.

We also decided to grant ACJ's request and disclaim jurisdiction over the transfer of its certificate to ACJ LLC and, on July 9, we advised the carrier of our decision. In previous cases, the Department has disclaimed jurisdiction over corporate reorganizations such as envisioned here based on the conclusion that the circumstances of the proposed transfer did not fall within the meaning of section 41105 of the Statute.³ Since the applicant advises that there will be no

¹ The incorporation of ACJ as a limited liability company in the State of Delaware became effective on July 9, 2002. ACJ requested that its disclaimer application be approved on or before that date.

² In fact, we note that the effectiveness of ACJ's certificate is specifically tied to its being under the ownership and control of its parent, ACAH.

³ See, for example, Orders 85-2-66, 88-12-38, 90-7-24, 92-12-26, and 2002-3-14.

ownership changes or changes in fitness-related areas as a result of the transfer to ACJ LLC, we see no reason not to do so here.

By this order, we confirm our oral actions of July 5 and July 9 as discussed above and reissue ACJ's certificate in the ACJ LLC name.

ACCORDINGLY, Pursuant to authority assigned by the Department in its regulations, 14 CFR 385.12:

1. We confirm our oral action of July 5, 2002, granting Atlantic Coast Jet, Inc. d/b/a Delta Connection a waiver from the revocation-for-dormancy provisions of section 204.7 of our rules until January 1, 2003.
2. We confirm our oral action of July 9, 2002, disclaiming jurisdiction over the transfer of the interstate scheduled passenger certificate currently held by Atlantic Coast Jet, Inc. d/b/a Delta Connection to Atlantic Coast Jet, LLC d/b/a Delta Connection.
3. We reissue the interstate scheduled passenger certificate currently issued to Atlantic Coast Jet, Inc. d/b/a Delta Connection in the name of Atlantic Coast Jet, LLC d/b/a Delta Connection.⁴
4. 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 385.50, may file their petitions within 10 days of the service date of this order.

The actions confirmed in this order were effective when taken and the filing of a petition for review shall not alter their effectiveness.

By:

RANDALL D. BENNETT
Director
Office of Aviation Analysis

(SEAL)

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<http://dms.dot.gov>*

⁴ The reissued certificate notes that the holder's authority to operate under the certificate is currently suspended pursuant to section 204.7. It also maintains the current aircraft limitations and the requirement that the carrier continue to be a wholly-owned subsidiary of ACAH and operate as a Delta Connection carrier pursuant to code-share arrangements with Delta Air Lines, Inc.



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

This Certifies That

**ATLANTIC COAST JET, LLC
d/b/a DELTA CONNECTION**

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 2002-7-22
On July 12, 2002
Effective on (See attached)*

*Randall D. Bennett
Director
Office of Aviation Analysis*



Terms, Conditions, and Limitations

**ATLANTIC COAST JET, LLC
d/b/a DELTA CONNECTION**

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.

The holder's authority to operate under this certificate is suspended under the terms of 14 CFR 204.7 until such time as the holder re-establishes its fitness to resume operations. In the event that the holder is redetermined fit to resume operations, the following conditions will apply:

- (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 operations authorized by this certificate are restricted to those performed with aircraft having a maximum passenger capacity of 60 seats or a maximum payload capacity of 18,000 pounds.*
- (3) The effectiveness of the authority contained in this certificate is conditioned upon the holder's continuing existence as a wholly-owned subsidiary of Atlantic Coast Airlines Holdings, Inc., and its operation under the terms of the Delta Connection code-sharing agreement with Delta Air Lines, Inc.*
- (4) 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 Department of Transportation 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).*
- (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.*

**This certificate is being reissued to reflect a corporate reorganization.*

(7) *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.*

(8) *The holder is authorized to conduct charter flights in interstate and/or foreign air transportation in accordance with the provisions of 14 CFR 212.*

(9) *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 resumes 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.*

**SERVICE LIST FOR
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