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Order 2001-11-16

Served: November 29, 2001



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

Issued by the Department of Transportation  
on the 29th day of November, 2001

In the matter of the revocation of the interstate and  
foreign charter certificates issued to

**LORAIR, LTD.**

in accordance with section 204.7 of the  
Department's Regulations

DOCKETS OST-95-290 - 23  
and  
OST-95-702 - 11

Notice of

**LORAIR, LTD.**

of intent to resume certificated air carrier  
operations and request for waiver of the provisions  
of 14 CFR 204.7

DOCKET OST-01-10760 - 2

**ORDER DENYING APPLICATION,  
DISMISSING NOTICE TO RESUME OPERATIONS  
AND REVOKING CERTIFICATE AUTHORITY**

**Summary**

By this order, we are denying the request of LorAir, Ltd., in Docket OST-01-10760, for a waiver of the revocation-for-dormancy provisions of 14 CFR 204.7, dismissing LorAir's notice to resume operations, and revoking for reason of dormancy the carrier's charter certificate authority.

**Background**

By Orders 95-11-29, served November 17, 1995, and 95-12-24, served December 21, 1995, LorAir, Ltd., of Tucson, Arizona, was issued certificates authorizing it to engage in interstate and foreign charter air transportation. Under the terms of the certificates and the provisions of section 204.7 of our rules, LorAir had one year from the issuance of its certificates to commence actual flying operations or its certificates could be revoked for reason of dormancy.

In October 1996, LorAir requested a waiver of the revocation-for-dormancy provisions of section 204.7 because it was not able to commence operations within the one-year period allowed under that rule. Ultimately, in July 1997, after receiving a total of three extensions of its revocation-for-dormancy date under section 204.7, the carrier received effective operating authority, that is, it provided evidence that it had received its Federal Aviation Administration (FAA) certificate and had in place the required management and financial resources to commence operations. However, it did not begin actual flight operations under its certificate at that time. As a result, the carrier sought, and was granted, additional waivers from the revocation provisions of section 204.7 before it actually commenced operations in June 1999.<sup>1</sup>

LorAir operated for only about 15 months. During this time, the FAA identified a number of compliance issues involving the company that were never fully resolved while the carrier was operating. In addition, we became concerned that LorAir was experiencing financial difficulties.<sup>2</sup> By letter dated October 3, 2000, LorAir advised the FAA that it was temporarily ceasing its air carrier operations as of that date in order to, among other things, resolve all then-outstanding FAA matters.

As a result of its cessation, under section 204.7, LorAir's economic authority was automatically suspended on October 3, 2000. By letter dated October 5, 2000, we reminded LorAir of the provisions of section 204.7 and further advised the carrier that it could not resume operations unless it was redetermined to be "fit, willing, and able" to do so; and that, if it did not have its fitness redetermined within one year (by October 3, 2001), its authority would be revoked for reason of dormancy as provided for in that rule.<sup>3</sup> By letter dated July 11, 2001, we reminded LorAir of its impending revocation date and the actions required should the company want to avoid revocation of its certificate authority. Such actions included the filing of a notice to resume operations or, in the alternative, a request for a waiver of the revocation-for-dormancy provisions of section 204.7.

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<sup>1</sup> See Order 99-6-18, issued June 22, 1999. It appears that the carrier's failure to meet extension deadlines was primarily due to its lack of an available aircraft and its inability to timely fulfill other FAA requirements.

<sup>2</sup> LorAir's failure to fully comply with the Department's recurrent financial reporting requirements while it was operating makes a full assessment of its financial position during that time difficult. However, the limited information available to us indicates that the company's operations were not profitable and that it was delinquent in meeting a number of its financial obligations.

<sup>3</sup> By letter dated October 25, 2000, LorAir contended to us that it had not ceased operations and requested that we rescind our determination that the company had done so. Upon review, we determined, among other things, that LorAir had not conducted any revenue flight operations since at least the middle of September 2000, that it did not have approved personnel in several key FAA-required positions, and that the operational status of its aircraft was questionable. Thus, by letter dated November 5, 2000, we advised LorAir that there was no basis for us to reverse our October 5 determination that it had ceased operations for purposes of section 204.7.

On October 2, 2001, LorAir filed in Docket OST-01-10760 a notice of its intent to resume operations along with a request for a waiver of section 204.7 to the extent necessary to allow the carrier an additional six months, or until April 2, 2002, to do so. In support of its request, LorAir states that, since its cessation in October 2000, the company has worked to obtain new financial support, and that this process has taken longer than anticipated.<sup>4</sup> LorAir argues that maintaining its certificate authority is in the public interest because there is currently an increased demand for charter air service in the country. LorAir asserts that the six-month extension should be granted under the theory "'no harm, no foul'. . . inasmuch as there is no jeopardy to anyone at this time, and upon satisfaction of the DOT, LorAir may well become a successful addition to air service."

### Decision

In implementing the revocation-for-dormancy provisions of section 204.7, the Department indicated that, while we would be prepared to grant waivers of the one-year dormancy period, it would not be our policy to do so frequently or routinely, and we would do so only where "good cause" was shown.<sup>5</sup> In showing good cause, we generally expect a company to demonstrate that it continues to meet the Department's fitness test and that it is well-advanced in its preparations to resume service, including the steps needed to obtain appropriate operating authority from the FAA. LorAir fails to satisfy either of these criteria. Moreover, the carrier has provided no information that otherwise establishes that there is good cause to grant its request.

Despite the statements in its application that the carrier is making significant progress towards resumption of its operations, we cannot verify that this is the case. Although LorAir has had discussions with the FAA about resuming operations, that agency advises us that LorAir has not provided the FAA with documentation establishing a plan for returning to operation. As a result, the FAA is unable to fully assess LorAir's current status vis-à-vis a resumption of its operations or, more importantly, whether it is reasonable to expect that LorAir can resume operations within the next six months. In this regard, we understand from the FAA that there appear to be a number of tasks for the carrier to accomplish, including required aircraft maintenance, before it would be in a position to resume operations. Moreover, we cannot ascertain what, if any, progress the carrier has made in resolving any of the FAA issues that led, in part, to LorAir's decision to cease operations. More importantly, on November 2, 2001, the FAA issued a Notice of Proposed Certificate Action proposing to revoke LorAir's FAA operating authority.

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<sup>4</sup> The carrier reports that it did undergo some ownership changes in August 2001. Before August, Ronald Clark owned 50 percent of the carrier, with Mr. and Mrs. Walter Cole holding the remaining stock. Since then, the company's ownership is as follows: Mr. Clark (37 percent); Nine Lives Holdings, Inc., a company that we understand is jointly owned by Mr. Clark and Mr. Cole (16 percent); Edward Coleman (42 percent); and James Bilbray (5 percent).

<sup>5</sup> See 51 FR 19072, May 27, 1986.

In addition, to establish its fitness, Lorair must demonstrate that it has a qualified management team, a reasonable operating proposal and sufficient financial resources to support such proposal, as well as an acceptable compliance disposition.<sup>6</sup>

LorAir states that it will initially use its one B-737 to conduct sports or other ad hoc charters.<sup>7</sup> Given previous questions about the carrier's financial condition, a key element in assessing this company's fitness to resume service is whether it has resolved any outstanding financial obligations and whether it has sufficient financial resources to conduct its proposed operations.<sup>8</sup>

LorAir advises that it has been pursuing additional outside investment. In this regard, the carrier states that it currently has an agreement with Transtar Holdings, Inc. (Transtar) that envisions investment from both Transtar and other parties. LorAir has not, however, provided us with a copy of its agreement with Transtar nor has it provided any other information on that company or on the other prospective investors/lenders. However, according to LorAir, the stock of Transtar, a public company, is not trading and the planned private investors have doubts about the funding of an airline at this time. Thus, we have no basis on which to conclude that this arrangement will proceed to closure. While LorAir states in its application that, if the Transtar arrangement falls through, there are other potential investors/lenders that have approached the carrier, the application contains no specific information on these potential funding sources.

Although the carrier states that its present owners can financially support resumption of its operations, no information substantiating LorAir's claims in this regard was included with the application. Moreover, although not mentioned by LorAir, we have learned that, on May 2, 2001, a default judgment of approximately \$50,000 was entered against LorAir in favor of Sunrise Avionics, Ltd. On August 23, a Writ of General Execution was entered by the County of Pima, Arizona. That writ provided for this judgment to be satisfied by the seizure of "all the property of LorAir, including, but not limited to, the carrier's FAA certificate." The writ was executed by the Sheriff of Pima County on August 24, 2001. That LorAir's principals

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<sup>6</sup> In addition, we also need to determine that the carrier remains a U.S. citizen. It is our understanding that all of LorAir's owners are, in fact, U.S. citizens.

<sup>7</sup> Initially, it would expect to operate approximately 20 block hours per month.

<sup>8</sup> In demonstrating financial fitness, we expect a carrier to provide, at a minimum, current financial statements, a first-year operating proposal including a forecast revenue/expense statement of such operations, and evidence that the company has sufficient financial resources to meet our financial fitness test. None of this information was included with the application. Moreover, in previous correspondence with the carrier, we advised LorAir that, in re-establishing its fitness, we would expect it to provide a detailed accounting of any past due financial obligations and evidence that the carrier had either paid, or had a plan to pay, such obligations. LorAir states that it has begun negotiations with its major creditors to satisfy their claims, that those negotiations are nearly complete, and that it expects that "all of its past due obligations can and will be satisfied prior to resuming operations." It has, however, provided no specific documentation or other evidence substantiating its assertions in this regard.

appear to have taken no steps to settle this judgment and prevent seizure of its assets is particularly troubling to us and, in our view, raises questions regarding their intentions for this company.<sup>9</sup>

Although the carrier has identified individuals whom it says will hold key management or technical positions,<sup>10</sup> we are unable to reach any firm conclusions about the adequacy of the company's management at this time. For instance, we note that the FAA is required to accept or reject individuals slated to hold the key technical positions of Directors of Operations, Maintenance, and Safety, Chief Inspector, and Chief Pilot. According to the FAA, LorAir has not formally advised that agency of all of its key technical personnel; thus we do not know whether all of the individuals currently slated for these key positions will be acceptable to that agency for their respective positions.

In sum, LorAir has failed to show that a waiver should be granted. Within a relatively short time after beginning flight operations, the FAA had concerns about aspects of its operations, and the Department had developed its own concerns about its financial situation. Within 15 months, LorAir had ceased its operations. It has spent the past year unsuccessfully seeking funding to resume operations and, during this time, allowed its assets to be seized. We cannot conclude, based on the information before us that, were we to grant LorAir the additional time it seeks, it is likely that it will be in a position to fully establish its fitness and have the FAA authority necessary to resume flight operations by the end of that time, particularly in light of the FAA's own proposed revocation action. We cannot ignore LorAir's past history with respect to past extension requests. As noted earlier, this company repeatedly failed to meet target extension dates prior to commencing operations. Absent compelling evidence that it will be operational within the six months it has requested, we are not prepared to extend its authority yet again and thus place a continuing administrative drain on the Department's, including the FAA's, limited resources to monitor this carrier in its attempts to resume operations.

In light of all of the above, we find that LorAir has not established good cause for a waiver from the revocation-for-dormancy provisions of section 204.7. Therefore, we are denying its request for an extension, dismissing its notice to resume operations, and revoking its certificate authority for reasons of dormancy. LorAir may apply for new certificate authority at such time as it can establish that it has obtained the financial and other resources necessary to establish its fitness and resume operations.

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<sup>9</sup> The May 2 default judgment indicates that, although the carrier was "regularly served with process" in the Sunrise Avionics case, the company failed to "appear and answer the Plaintiff's Complaint within the period prescribed by law," and thus, a default judgment was entered against LorAir.

<sup>10</sup> These include: Ronald Clark (President, General Manager, and Director of Safety), James Bateman (Director of Operations), Felix Howard (Director of Maintenance), Walter Hargraeves (Chief Inspector), and Ross Goodcell (Chief Pilot).

**ACCORDINGLY,**

1. We deny the application of LorAir, Ltd., for a waiver of the revocation-for-dormancy provisions of 14 CFR 204.7, and dismiss its notice to resume operations.
2. We revoke for reasons of dormancy, under 14 CFR 204.7, the certificate of public convenience and necessity reissued to LorAir, Ltd., by Order 99-6-18, authorizing it to engage in interstate charter air transportation of persons, property, and mail.<sup>11</sup>
3. We will serve a copy of this order on the persons listed in Attachment A.

By:

**READ C. VAN DE WATER**  
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>*

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<sup>11</sup> By this order, we revoke only LorAir's interstate certificate. Revocation of the foreign charter certificate is subject to Presidential review in accordance with section 41307 of the Statute and will be handled in a separate order.

**SERVICE LIST FOR LORAIR, LTD.**

MR. EDWARD S. COLEMAN  
CHIEF EQUITY OFFICER/GENERAL COUNSEL  
LORAIR, LTD.  
1850 E. FLAMINGO RD, STE 125  
LAS VEGAS, NV 89119-5116

MR RONALD CLARK, GENERAL MANAGER  
LORAIR, LTD.  
1002 E. VALENCIA RD  
TUCSON, AZ 85706

MR. JOHN ANTHONY, POI  
FEDERAL AVIATION ADMINISTRATION  
FLIGHT STANDARDS DISTRICT OFFICE  
2800 N. 44<sup>TH</sup> STREET, STE. 450  
PHOENIX, AZ 85008-1561

MR. MONROE BALTON, AWP-7  
OFFICE OF THE REGIONAL COUNSEL  
FAA, WESTERN-PACIFIC REGION HQ  
15000 AVIATION BLVD  
HAWTHORNE CA 90261

MR. RICHARD DUTTON  
ASST. MANAGER CSET  
FAA, STE 203B  
45005 AVIATION DRIVE  
DULLES, VIA 20166-7537

MR. THOMAS STUCKEY, ACTG. MANAGER  
FLIGHT STANDARDS DIV, AWP-200  
FAA, WESTERN-PACIFIC REGION HQ.  
15000 AVIATION BLVD  
HAWTHORNE CA 90261

MS. JONI MOUNT  
OFFICIAL AIRLINE GUIDE  
2000 CLEARWATER DRIVE  
OAK BROOK IL 60521

MR. ALLAN MUTEN  
ASSISTANT TREASURER  
AIRLINES REPORTING CORPORATION  
1530 WILSON BLVD, STE 800  
ARLINGTON, VA. 22209-2448

MR. DONALD BRIGHT, ACTG DIR  
OFFICE OF AIRLINE INFO K-25  
DEPARTMENT OF TRANSPORTATION  
400 SEVENTH ST SW  
WASHINGTON DC 20590

AMERICAN ASSOCIATION OF AIRPORT  
EXECUTIVES  
601 MADISON ST, STE 400  
ALEXANDRIA, VA 22314-1756

MR. PETER LYNCH, ASST CHIEF  
COUNSEL FOR ENFORCEMENT AGC-300  
FEDERAL AVIATION ADMINISTRATION  
800 INDEPENDENCE AVE SW  
WASHINGTON DC 20591

MR. JIM ZAMMAR  
DIRECTOR OF REVENUE ACCOUNTING  
AIR TRANSPORT ASSOCIATION  
1301 PENN AVE NW, STE 1100  
WASHINGTON DC 20004