



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

Issued by the Department of Transportation
on the 24th day of December, 2008

Application of

ALASKA CENTRAL EXPRESS, INC.

for reissuance of its certificate of public convenience and
necessity under 49 U.S.C. § 41102

Docket DOT-OST-1996-1657

ORDER REISSUING EFFECTIVE CERTIFICATE

Summary

By this order, we reissue the certificate of public convenience and necessity issued to Alaska Central Express, Inc. (“ACE”) authorizing it to engage in interstate air transportation of persons, property, and mail to reflect its effective date.

Background

By Order 2007-4-14, issued April 16, 2007, the Department found ACE fit, willing, and able to engage in interstate air transportation of persons, property, and mail, and issued to it a certificate authorizing it to engage in such operations. However, the authority granted by that certificate was not to become effective until the sixth business day after the Department received (1) a copy of ACE’s Air Carrier Certificate and Operations Specifications issued by the Federal Aviation Administration (“FAA”) authorizing such operations, (2) evidence of liability insurance coverage meeting the requirements of 14 CFR Part 205 of our rules for such operations, (3) updated fitness information describing any changes it may have undergone subsequent to the show cause order in this proceeding,¹ and (4) evidence that ACE continues to have sufficient resources to meet our financial fitness criteria.

On January 4, 2008, ACE filed updated fitness information in Docket DOT-OST-1996-1657 to make its authority effective, including a statement of any changes it had undergone in areas affecting its fitness subsequent to the issuance date of the show cause order in this proceeding.²

¹ See Order 2007-3-25, issued March 30, 2007.

² According to ACE, Mr. Gregory Witz, a member of ACE’s Board of Directors, and Mr. Robb Milne, the company’s Chief Financial Officer, were incorrectly listed in Order 2007-3-25 as still holding their respective positions with the company. However, these individuals are no longer with the company. Mr. Milne’s position has been replaced by Mr. John Seaman as the company’s Controller. Mr. Seaman’s

Upon review of the information provided by ACE, we determined that the air carrier had fulfilled the requirements set forth in Order 2007-4-14, to receive effective certificate authority. Accordingly, ACE's certificate authority became effective on January 15, 2008, that is, six business days after the Department received the required documents set forth in the terms and conditions attached to that order. By this order, we reissue to ACE its certificate of public convenience and necessity to reflect its effective date.

REQUEST FOR CONFIDENTIAL TREATMENT

On January 4, 2008, ACE filed a motion for confidential treatment under section 302.12 of our rules ("Rule 12") for certain information in connection with its request for effective authority. The information submitted included a copy of the applicant's revenue projections contained in its revised *pro forma* Profit and Loss Statement (Attachment 6). In support of its request, ACE noted that the document submitted is an update of a previously filed document for which the Department had already granted confidential treatment.

Rule 12 instructs us to evaluate requests for confidential treatment by the standards of disclosure found in the Freedom of Information Act (5 U.S.C. Section 552). Information may be withheld from disclosure under 5 U.S.C. 552(b)(4) if it is (1) commercial or financial, (2) obtained from a person outside of government, and (3) privileged or confidential (*Gulf and Western Industries, Inc. v. United States*, 615 F.2d 527, 529 (D.C. Cir. 1979)).

There is no question that the information for which ACE seeks confidential treatment is financial or commercial in nature and that it was obtained from a person outside the government. The remaining question is whether the information is privileged or confidential--whether "disclosure of the information is likely to have either of the following effects: (1) impair the Government's ability to obtain necessary information; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained" (*National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)). Further, to be privileged or confidential, the information must not be of the type that is usually released to the public (*Gulf and Western Industries, Inc. v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979)).

As ACE correctly notes, the Department previously granted confidential treatment to the air carrier's revenue projections contained in its *pro forma* Profit and Loss Statement.³ We have reviewed the updated information and find that our basis for granting the air carrier's previous request to withhold the document from public disclosure continues to apply. Therefore, we will grant ACE's request for confidential treatment of Attachment 6 filed on January 4, 2008.

ACCORDINGLY, acting under authority assigned by the Department in its Regulations 14 CFR 385.12(a)(2):

1. We reissue to Alaska Central Express, Inc., the interstate section 41102 certificate issued to it by Order 2007-4-14, in the attached form to reflect the effective date.

background information was reviewed by the Department in the Show Cause order. See January 4, 2008 letter filed in Docket DOT-OST-96-1657-0013, at 2.

³ See December 8, 2006, letter from the Department to ACE filed in Docket DOT-OST-1996-1657.

2. We direct Alaska Central Express, Inc., to submit to the Air Carrier Fitness Division a first year progress report within 45 days following the end of its first year of certificated operations.⁴

3. 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 14 CFR 385.30 may file their petitions within 10 days of the service date of this order.

The action confirmed in this order was effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

TODD W. HOMAN
Director
Office of Aviation Analysis

*An electronic version of this document is available on the World Wide Web at:
<http://www.regulations.gov>*

⁴ The report shall include a description of the air carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements, and a listing of current senior management and key technical personnel.



***Certificate of Public Convenience and Necessity for
Interstate Air Transportation***
(as reissued)

This Certifies That

Alaska Central Express, Inc.

is authorized, subject to the provisions of Subtitle VII of Title 49 of the 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 2008-12-17
On December 24, 2008
Effective on January 15, 2008***

***Todd Homan
Director
Office of Aviation Analysis***



Terms, Conditions, and Limitations

Alaska Central Express, Inc.

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's authority under this certificate is effective only to the extent that such operations are also authorized by the FAA, and comply with all U.S. Government requirements concerning security, including, but not limited to 49 CFR Part 1544.***

(2) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(3) 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.

(4) The holder's authority contained under this certificate is limited to:

(a) scheduled and charter air transportation of cargo and mail with aircraft having a maximum payload capacity of no more than 18,000 pounds.

(b) charter air transportation of persons with aircraft having a maximum passenger capacity of less than 60 seats or a maximum payload capacity of no more than 18,000 pounds.

(5) 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.

(6) The holder may not enter into any form of agreement or arrangement with Mr. Neil Bergt, any member of his family, excluding Mr. Michael A. Bergt, or any entity owned or controlled by

* *This certificate is being reissued to reflect its effective date.*

** *To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.*

Mr. Neil Bergt or a member of his family, excluding Mr. Michael A. Bergt, without obtaining prior approval from the Department.

(7) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held shall be suspended under the terms of 14 CFR Part 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 Alaska Central Express, Inc.

MR ROBERT P SILVERBERG ESQ
ATTORNEY FOR ALASKA CENTRAL EXPRESS INC
SILVERBERG GOLDMAN & BIKOFF LLP
1101 30TH STREET NW
SUITE 120
WASHINGTON, DC 20007

MR MICHAEL BERGT
GENERAL MANAGER
ALASKA CENTRAL EXPRESS INC
5901 LOCKHEED AVENUE
ANCHORAGE ALASKA 99502

MR. STEPHEN J. STEWART
FEDERAL AVIATION ADMINISTRATION
ANCHORAGE FSDO 03
4510 OLD INTERNATIONAL AIRPORT
ANCHORAGE ALASKA 99502

FLIGHT STANDARDS DIVISION MANAGER AAL-200
FEDERAL AVIATION ADMINISTRATION
ALASKAN REGION HEADQUARTERS
222 WEST 7TH AVENUE, SUITE 4
ANCHORAGE, ALASKA 99513

MR CLAY MORITZ RTS-42
OFFICE OF AIRLINE INFO
DOT/RITA/BTS E-36
1200 NEW JERSEY AVENUE SE
WASHINGTON DC 20590

WILLIAM J WEBER
CERTIFICATION SECTION MANAGER
FAA AFS-900
45005 AVIATION DRIVE
SUITE 131
DULLES VA 20166

MR PETER J LYNCH
ASSISTANT CHIEF COUNSEL
FOR ENFORCEMENT, AGC-300
FEDERAL AVIATION ADMINISTRATION
800 INDEPENDENCE AVENUE, SW
WASHINGTON DC 20591

REGIONAL COUNSEL AAL-7
FEDERAL AVIATION ADMINISTRATION
ALASKAN REGION HEADQUARTERS
222 WEST 7TH AVENUE, SUITE 4
ANCHORAGE ALASKA 99513