

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of :
 :
 :
 SOUTHERN AIR INC. :
 and :
 SOUTHERN AIR TRANSPORT, INC. : Docket OST-99-5670
 :
 for approval of a transfer of route authority :
 under 49 U.S.C. § 41105 :
 :

JOINT CONSOLIDATED REPLY OF
SOUTHERN AIR INC. AND
SOUTHERN AIR TRANSPORT, INC.
AND MOTION FOR LEAVE TO FILE

Communications with respect to this document should be sent to:

Pierre Murphy
Elizabeth C. Collins
One Westin Center
2445 M Street, N.W.
Suite 260
Washington, DC 20037
(202) 872-1679

Counsel for
Southern Air Transport, Inc.

Lorraine B. Halloway
Thomas Newton Bolling
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2500

Counsel for
Southern Air Inc.

June 17, 1999

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Neither Kitty Hawk's¹ obvious aversion to new B-747 competition nor Polar's continued interest in acquiring a U.S.-Colombia route should prevent Southern from commencing flight operations on or about September 1, 1999. The pending route transfer application ("Joint Application") demonstrates Southern's fitness, Southern's investors are prepared to commit sufficient capital to satisfy the Department's requirements and neither Kitty Hawk nor Polar has challenged any other element of Southern's fitness. Consistent with precedent ignored by Kitty

¹ Common names of carriers are used.

Hawk, the Joint Application should be approved as soon as the Department completes its fitness review.

Southern and SAT state as follows in support of their position:

1. Kitty Hawk's procedural arguments have no merit and cannot disguise Kitty Hawk's real objective of restricting all-cargo competition. Kitty Hawk is shedding crocodile tears over procedural defects only it sees in the Joint Application. Contrary to Kitty Hawk's claim, Southern and SAT are not attempting to circumvent the Department's regulations and precedents for securing operating authority or a fitness determination from the Department. Southern is asking the Department to transfer SAT's authority to Southern as soon as the Department decides Southern's fitness, not before. (See Joint Application at 4) The Department's regulations and precedent permit a non-operating applicant to seek the Department's approval for a route transfer of authority it has acquired. (See, e.g., Order 92-11-46 at 3-4 (approving the Joint Application of Air Micronesia, Inc., Continental Airlines, Inc. and Continental Micronesia, Inc. for a transfer of certificates to a new entity without requiring that entity to apply for a certificate). Accord, Order 86-4-68 at 8-9 (approving the Application of Challenge Air Transport, Inc. for a transfer of certificates and exemption authority to a new entity without requiring that entity to apply for a certificate or exemption

authority))² A route transfer application may include requests for interstate, foreign, scheduled and charter authority.³ The route transfer application filed by Southern and SAT is not unusual, much less unique. Although Kitty Hawk says it was "unable to find a similar significant route transfer case"⁴ involving a non-operating transferee, the Department has recognized that a route transfer to a non-operating applicant "is comparable to a standard route transfer arrangement. The main difference here is that the acquiring company is a new airline, requiring a fitness determination rather than an already established operating airline that does not." (Order 92-12-4 at 3) Thus, Kitty Hawk is wrong in asserting that Southern and SAT have "put the cart before the horse"⁵ in seeking a fitness determination in the context of a route transfer application.

2. Kitty Hawk's so-called "substantive" arguments are pure nonsense at worst and speculative at best. Kitty Hawk suggests Southern should be denied authority to operate since it plans to begin service with a "relatively small fleet," and might not be profitable during the first year, lacks "economies of scale that are characteristic of the industry" and, as a result, might not have "sufficient financial

² Contrary to Kitty Hawk's assertions (see Kitty Hawk Answer at 2), Southern has demonstrated that it is a U.S. citizen (see Exhibit 2 to the Joint Application) and "possesses the financial, managerial and requisite compliance disposition to be issued a certificate" (see the Joint Application at 3 and Exhibits 1, 4, 7, 12 and 13).

³ Kitty Hawk is applying the procedural rules for certificate applications to a route transfer application, which is incorrect. (Kitty Hawk Answer at fn.1)

⁴ Kitty Hawk Answer at 4.

⁵ Kitty Hawk Answer at 2.

resources to support its initial operation." (See Kitty Hawk Answer at 5-6) The Department's regulations and precedents require Southern to have "sufficient financial resources to support its initial operation," and Southern's investors are fully prepared to provide those resources.⁶ Southern reasonably expects to become profitable during its first year of flight operations, but projecting a first-year profit has never been a requirement for the Department to grant start-up authority to a new carrier, as Kitty Hawk itself acknowledges (see Kitty Hawk Answer at 5). If aircraft "economies of scale" were a prerequisite to securing operating authority from the Department, very few (if any) new carriers would ever get off the ground to compete with carriers such as Kitty Hawk. Moreover, Kitty Hawk's suggestion that the Department should penalize Southern for planning its first-year flight operations conservatively (see Exhibit 12 to the Joint Application at 1) is contrary to the Department's admonition that new carriers should expand conservatively in their first year of aircraft operations and not overextend their service commitments. Southern's plans are consistent with smaller start-up carriers, including Reliant Airlines and Asia Pacific Airlines, which proposed to begin all-cargo charter operations with one aircraft during the first year. The Department

⁶ Kitty Hawk correctly points out that Southern should have calculated the amount Southern needs for the first three months by dividing Southern's first-year operating cost forecast by four. Doing so increases the amount of capital required to cover pre-operating costs and the first three months of operating costs by an additional \$1,632,150. Southern has access to sufficient operating capital to satisfy the Department's requirements. Southern's investors were already committed to fund \$3.4 million (not \$2,246,000), and they have readily agreed to fund the additional amount required by Southern.

approved these first-year one-aircraft operating plans and did not require a contingency plan or the addition of additional aircraft in subsequent years. (Orders 98-10-5 and 98-10-6) Thus, the Department has clearly established precedent for approving Southern's first-year operating plan. Notwithstanding Kitty Hawk's sheer speculation that Southern will lack "the necessary [fleet] flexibility to ensure maximum utilization in revenue operations" (see Kitty Hawk Answer at 5), Southern's plan to operate two B-747 freighter aircraft by the end of the first year is sound and has been planned carefully by former SAT management employees who are highly experienced in B-747 all-cargo operations (see Exhibit 12 to the Joint Application). Moreover, Southern's financial statements (see Exhibit 13) include funds available for contingencies, and Southern's contingency plans include the ability to wet-lease aircraft as needed to meet its service commitments to customers.

3. Kitty Hawk's suggestion that Southern's financial statements are defective since they do not include loan repayments assumes that Southern's investors will be due such repayments during the first year of operations.⁷ Kitty Hawk's assumption is incorrect since no such repayments will be due during the period of time in question. Thus, Southern's financial statements do not include a line item for loan repayments. In addition, Southern will submit to the Department shortly a set of amended financial statements verifying the increased amount of

⁷ Although Kitty Hawk complains that "a good deal of [the exhibit material is] . . . not available to Kitty Hawk," the only confidential exhibits are personal financial and ownership documents which are normally confidential.

start-up capital Southern's investors have agreed to commit. That amount of capital will satisfy the Department's fitness requirements.

4. There is no basis for Kitty Hawk's complaints about Southern's acquisition of "extensive international route authority in markets that are restricted" (Kitty Hawk Answer at 10). In truth, Southern is seeking transfer of only one usable limited-entry route: U.S.-Colombia. Argentina and Ecuador are limited-entry markets as well, but SAT holds no frequencies between the U.S. and those countries.⁸ Hong Kong and Australia are open to all U.S. air-cargo carriers, including Kitty Hawk, as are the other routes subject to the Joint Application. Consistent with its regulations and precedent, the Department should transfer all of SAT's authority to Southern as soon as Southern's fitness is determined by the Department (see Exhibit SAT-1 to the Joint Application). Curiously, Kitty Hawk did not oppose SAT's recent application for renewal of its Colombia⁹ exemption authority for the express purpose of transferring the authority to Southern, and Kitty Hawk did not dispute the legal basis explained by Southern and SAT for approval of that application in their joint reply and surreply to Polar. (See Joint Reply of Southern Air Transport, Inc. and Southern Air Inc. filed April 9, 1999, and Joint Surreply of Southern Air Transport, Inc. and Southern Air Inc. and Motion for Leave to File filed April 30, 1999, in Docket OST-96-1153) If Kitty Hawk really

⁸ The Argentina and Ecuador points were granted sua sponte by the Department as intermediate and beyond points in conjunction with SAT's U.S.-Chile authority. (See Order 95-3-31)

⁹ See Docket OST-96-1153.

believed SAT's application for renewal of its limited-entry U.S.-Colombia authority was improper because it was made for the purpose of transferring the authority to Southern, Kitty Hawk could have opposed SAT's transfer at that time.

5. Polar's answer is merely a retread of its arguments to secure a U.S.-Colombia designation and adds nothing new about the issues involved in SAT's transfer of its authority to Southern. Polar's answer seems aimed more at influencing the outcome to the U.S-Colombia All-Cargo Services Proceeding than considering the merits of the Joint Application, and the Department should consider Polar's position in that route case, where it can be more properly addressed. In support of SAT's renewal of its U.S.-Colombia exemption and designation in Docket OST-96-1153, Southern and SAT have shown why the Department should renew the authority even though it is now dormant. Southern and SAT do not oppose a temporary grant of authority to Polar until Southern is prepared to begin its U.S.-Colombia service after its first year of flight operations.

For the foregoing reasons, the Department should transfer all of SAT's operating authority to Southern as soon as Southern's fitness is determined by the Department.¹⁰

Respectfully submitted,

CROWELL & MORING LLP

Pierre Murphy
pmurphy@lopmmurphy.com

Lorraine B. Halloway
lhalloway@cromor.com

Elizabeth C. Collins
ecollins@lopmmurphy.com

Thomas Newton Bolling
tbolling@cromor.com

Counsel for
Southern Air Transport, Inc.

Counsel for
Southern Air Inc.

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¹⁰ Southern and SAT move for leave to file an unauthorized document pursuant to Rule 4(f) of the Department's Rules of Practice. This reply responds to arguments contained in the answers of Kitty Hawk and Polar and corrects errors of law and fact in those answers. Acceptance of this reply will provide a more accurate and complete record on which the Department can base its decision and will not prejudice any party.

CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on counsel for Kitty Hawk and Polar and the parties served with their answers in the manner specified in the Department's Rules of Practice.

Thomas Newton Bolling

June 17, 1999

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