

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Application of	:	
	:	
BELLVIEW AIRLINES LTD.	:	Docket OST-00-6784
	:	
for a foreign air carrier permit under	:	
49 U.S.C. § 41032.	:	

ANSWER OF NIGERIA AIRWAYS, LTD.

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February 7, 2000

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On January 11, 2000, Bellview Airlines Limited (Bellview) filed an application for a foreign air carrier permit authorizing it to conduct foreign scheduled air transportation of persons, property and mail between Lagos, Nigeria and New York (JFK International Airport) in the United States. Nigeria Airways, Ltd. (Nigeria Airways), which (1) has been designated by the Nigerian Government under the U.S.-Nigeria Air Transport Agreement to provide this service,¹ (2) holds a foreign air carrier permit to provide this service, and (3) intends to resume service between the United States and Nigeria by the end of February 2000, strongly objects, for the reasons set forth herein, to the issuance of the foreign air carrier permit sought by Bellview.

Article 3 of the U.S.-Nigeria bilateral air transport agreement establishes the requirement that U.S. and Nigerian airlines must be designated by their respective governments prior to applying to operate scheduled service between the U.S. and Nigeria over the routes specified in the Annex to the agreement. Indeed, paragraph 2 of Article 3 specifies the proce-

¹ We have contacted the Department and have been informed that Nigeria Airways is the only airline that has been designated by the Government of Nigeria to provide service under the bilateral.

dures to be followed when more than one airline of a Contracting Party is designated to provide service under the agreement. And, paragraph 3 of Article 3 states that, only after an airline has been designated and authorized in the manner specified in the agreement can it begin to operate the services specified in the Annex to the agreement.

Nigeria Airways has been designated to provide such scheduled service and has consistently provided scheduled air transportation between the U.S. and Nigeria until 1993, when the Department issued Order 93-8-15 (Aug. 11, 1993) prohibiting Nigerian and U.S. carriers from providing service between the United States and the Murtala Muhammed International Airport, effectively banning direct air transportation between the two countries. That ban on direct flights between the United States and Murtala Muhammed International Airport was lifted by the Department on December 22, 1999 (Order 99-12-19). Since that time, Nigeria Airways has been working to resume its scheduled service between the United States and Nigeria, and presently intends to resume flights on February 29, 2000.

As Nigeria Airways pointed out in responding to Bellview's application for an exemption in Docket No. OST-00-6783-1, Bellview has not been designated by the Government of Nigeria to provide scheduled service between the United States and Nigeria. Nor has Bellview provided the Department with economic operating authority issued by the Government of Nigeria that authorizes the operations for which Bellview seeks authority from the Department. See 14 C.F.R. § 211.20(i). Thus, Bellview has failed to demonstrate that it has either been designated or granted the requisite authority by the Government of Nigeria to initiate service between Nigeria and the United States.

In a recent case involving an application by Translux (a private company, based in Luxembourg, organized under the laws of Luxembourg, and licensed by that country to conduct

world-wide operations), the Department, after pointing out that the Grand Duchy of Luxembourg had not designated the carrier to conduct Luxembourg-U.S. charter operations under the “Open Skies” United States-Luxembourg Agreement, held that:

We view this lack of designation as critically significant in this case. A government’s act of designating a carrier under a bilateral aviation agreement manifests that government’s determination and desire that the carrier in question should receive the benefits available under the agreement. In the absence of this commonly recognized official act of support on the part of the Government of Luxembourg, we do not find that the public interest warrants granting the authority requested by Translux, authority which, absent a designation, is extrabilateral in nature.

Order 96-4-37 at 3-4.

Here, Bellview’s only public interest argument is that it “seeks to begin its proposed operations in February 2000,” Bellview Application at 1. As discussed above, Nigeria Airways, the Nigerian airline lawfully designated and authorized to provide service under the bilateral by both the U.S. and Nigerian governments, intends to resume service on February 29, 2000, thus undermining Bellview’s claim that it is the only Nigerian airline which can commence such service. Moreover, as the Department is, no doubt, aware, the Federal Aviation Administration (FAA) has not yet conducted an assessment of the Federal Republic of Nigeria’s compliance with the requirements of the Chicago Convention, and, if the FAA determines that no Nigerian airline may commence service to and from the United States with its own aircraft until after such an assessment has been favorably completed, it will be the FAA’s completion of a favorable assessment, rather than the desires of a Nigerian airline operating its own aircraft, that will determine when such scheduled service between Nigeria and the United States can commence. Indeed, since Nigeria Airways has previously operated to and from the United

States, the FAA process for Nigeria Airways should be more expeditious than that for Bellview, a carrier that has never been granted operating authority by the FAA.

In summary, Bellview has not been designated by the Government of Nigeria to provide the requested scheduled service in the manner required by the U.S.-Nigerian bilateral agreement, and has not otherwise established that the institution of its requested service would be in the public interest, particularly when Nigeria Airways, the carrier designated by the Government of Nigeria to provide U.S.-Nigeria scheduled air transportation service, has indicated that it will resume operating the very service for which Bellview seeks authority. Under these circumstances, the Department of Transportation should dismiss Bellview's application for a foreign air carrier permit.

WHEREFORE, for the foregoing reasons, Nigeria Airways, Ltd. respectfully requests that the Department of Transportation dismiss Bellview's application for a foreign air carrier permit in this proceeding.

Respectfully submitted,

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February 7, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing contingent motion for leave to file and answer of Nigeria Airways, Ltd. was served this day upon the persons listed on the attached service list, via first-class mail, postage prepaid.

/s/ John E. Gillick
John E. Gillick

Washington, D.C.
February 7, 2000

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