



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

SERVED DEC 13 1999

Issued by the Department of Transportation
on the 12th day of October, 1999

Application of

AIR COMET S.A.

for a foreign air carrier permit under
49 U.S.C. § 41301

Docket OST-97-2196

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

Summary

In this order we are issuing Air Comet S.A., a foreign air carrier of Spain, a foreign air carrier permit under § 41301 of Title 49 of the U.S. Code to perform charter foreign air transportation of persons, property and mail between Spain and the United States; and other charters subject to Part 212 of the Department's rules.

Application

By application filed March 10, 1997, as supplemented September 13, 1999, Air Comet seeks an initial foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between Spain and the United States; and to perform other charters in accordance with the Department's rules governing charter operations.¹

In support of its application, Air Comet states that it has been licensed by the Government of Spain to perform the proposed services; that it is substantially owned and effectively controlled by citizens of Spain; and that it is operationally and financially fit to perform the proposed services.

No answers were filed in response to Air Comet's permit application.²

¹ We granted Air Comet initial exemption authority on March 19, 1997, to engage in charter foreign air transportation of persons, property and mail between Spain and the United States, and to perform other charters in accordance with Part 212 of the Department's rules. See Order 97-4-28. On April 30, 1999, we renewed Air Comet's authority to conduct these operations for one year, through April 30, 2000. See Notice of Action Taken, dated April 30, 1999, Docket OST-97-2197.

² On May 10, 1999, Universal Air Travel Plan (UATP) filed both in this docket, and in the docket containing Air Comet's exemption authority (Docket OST-97-2197) correspondence sent by UATP to

Decision

We have reviewed the record in this case, which is summarized in the attachment to this order, and have decided to grant the application using simplified Subpart Q procedures.³ The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.⁴ The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case, because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Air Comet is qualified to conduct the proposed operations.

Public Interest Considerations

Aviation relations between the United States and Spain are governed by the U.S.-Spain Air Transport Services Agreement (entered into force August 3, 1973), as amended. While the charter authority Air Comet seeks is not encompassed in the bilateral aviation agreement between the United States and Spain, we find that adequate comity and reciprocity and our overall aviation relationship with Spain support favorable action on Air Comet's application.⁵

Operational and Financial Fitness

We find that Air Comet is operationally and financially fit to conduct the operations at issue here. Air Comet commenced passenger charter operations between Spain and the United States in March 1997, has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five years.⁶ Air Comet holds effective authority from its

Air Comet relating to Air Comet's use of the trade name Air Plus Comet. We need not address this issue. Under Part 215 of our Regulations, responsibility for resolving name disputes rests with the air carriers involved through recourse to the trade name statutes and the courts. We note from UATP's correspondence that it is pursuing such a resolution in the Spanish courts.

³ 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

⁴ 62 FR 13935, March 24, 1997.

⁵ See United States-Spain Air Transport Services Agreement (entered into force August 3, 1973), as amended. Under the Department's rules governing charter operations (14 CFR Part 212), unless otherwise ordered by the Department, any foreign air carrier whose permit authorizes charters may perform Third and Fourth Freedom charters without limitation or specific prior approval, and may perform Fifth Freedom charters upon obtaining a specific statement of authorization from the Department.

⁶ Air Comet reports that during 1998 it inadvertently conducted a number of flight operations to/from the United States with a new aircraft (A-310) prior to including the aircraft on its FAR Part 129 Operations Specifications. The FAA's New York office reports that Air Comet subsequently paid a \$7,000 civil penalty to resolve the violations and is now in good standing with that office. See FAA Docket 98EA29001.

homeland to conduct the proposed operations.⁷ The FAA has advised us that it knows of no reason why Air Comet's request for a foreign air carrier permit should not be approved.⁸ Finally, Air Comet has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds.

Ownership and Control

We find that Air Comet is substantially owned and effectively controlled by citizens of Spain. Air Comet is a privately held company, owned by four Spanish companies (Autobuses Urbanos del Sur, S.A.; Transportes de Cercanías, S.A.; Proturín, S.A. and Segetur, S.A.). All of Air Comet's officers, directors and key management personnel are citizens of Spain.

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue Air Comet S.A. an initial foreign air carrier permit in the form attached;
2. Air Comet S.A. is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a)(1) of our Regulations;⁹ and
5. The public interest does not require an oral evidentiary hearing on the application.

ACCORDINGLY,

1. We issue, in the form attached, a foreign air carrier permit to Air Comet S.A. authorizing it to engage in charter foreign air transportation of persons, property and mail between any point or points in Spain and any point or points in the United States; and to perform other charters in accordance with 14 CFR Part 212 of the Department's regulations;

⁷ On February 28, 1997, the Government of Spain issued Air Comet an Operating License and Air Operator's Certificate authorizing Air Comet to engage in international passenger charter operations between Spain and the United States, Europe and Africa.

⁸ A copy of the FAA's March 18, 1997, memorandum has been placed in Docket OST-97-2196.

⁹ This finding is based on the fact that the grant of this permit will not result in a near-term increase in fuel consumption in excess of 10 million gallons.

2. The exercise of the privileges granted above are subject to Air Comet's compliance with the conditions listed in Attachment A;
3. To the extent not granted, we deny all requests for relief in Docket OST-97-2196;
4. Unless disapproved by the President of the United States under § 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for § 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;¹⁰ and
5. We will serve a copy of this order on Air Comet S.A.; the Ambassador of Spain in the United States; Universal Air Travel Plan; the Department of State and the Federal Aviation Administration (New York-IFO).

By:

A. BRADLEY MIMS
Acting 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/reports/reports_aviation.asp*

¹⁰ This order was submitted for § 41307 review on October 12, 1999. On December 8, 1999, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.