

bd

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION
98 MAY 22 PM 12: 07
DOCKET SECTION

Joint Application of)
)
SIMMONS AIRLINES, INC. d/b/a) OST-98-3598
AMERICAN EAGLE)
and)
AMERICAN EAGLE AIRLINES, INC.)
)
under 49 USC 41105 for transfer of)
certificates, or in the alternative)
for disclaimer of jurisdiction)

**PETITION OF LEGEND AIRLINES, INC.
FOR RECONSIDERATION
OF ORDER 98-4-24**

Communications with respect to this document should be addressed to:

EDWARD P. FABERMAN
PAUL A. OLSEN
Ungaretti & Harris
1747 Pennsylvania Ave., NW
Suite 900
Washington, D.C. 20006-4604
(202) 778-4460; (202) 778-4450
fax: (202) 331-1486
Counsel for Legend Airlines

T. ALLAN McARTOR
President and CEO
Legend Airlines, Inc.
7701 Lemmon Avenue
Dallas, Texas 75209
tel: (214) 358-6333
fax: (214) 358-6336

DATED: May 22, 1998

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Joint Application of)
)
SIMMONS AIRLINES, INC. d/b/a) OST-98-3598
AMERICAN EAGLE)
and)
AMERICAN EAGLE AIRLINES, INC.)
)
under 49 USC 41105 for transfer of)
certificates, or in the alternative)
for disclaimer of jurisdiction)

DATED: May 22, 1998

**PETITION OF LEGEND AIRLINES, INC.
FOR RECONSIDERATION
OF ORDER 98-4-24**

Legend Airlines, Inc., ("Legend") respectfully requests reconsideration of the Department's April 23, 1998, Order Transferring and Reissuing Certificates to American Eagle Airlines, Inc., and Simmons Airlines, Inc. (jointly referred to as "American") pursuant to 14 C.F.R. §§ 302.1758 and 302.37. The Order in Docket 98-3598 and the accompanying Certificate are erroneously based on the conclusion that American is "fit, willing, and able" and has the authority to operate, *inter alia*, from Love Field in Dallas under the Wright Amendment.¹ Because American is contractually prevented from

¹ More specifically, the certificate states that "The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998."

interstate operations at Love Field, the Order and Certificate are erroneous and should be modified.

The Joint Application to Transfer Certificates was filed by American on March 10, 1998. That Application contains no discussion or request regarding American's desire to initiate services from Love Field. As a result, notice was not provided that American might obtain a certificate allowing it to conduct Love Field operations to the extent permitted by the 1998 Appropriations Act (which amended and clarified the long-standing Wright Amendment).

American's failure to include in its application an acknowledgment of limitations of its ability to operate at Love Field was not surprising because, as a signatory to a Use Agreement, American's operations at Love Field are vastly restricted. In fact, as described in Legend's Answer to four recent petitions by American,² the Use Agreement prohibits American from conducting *any* interstate operations at Love Field. A copy of Legend's Answer is attached hereto and incorporated by reference. Because of the restrictions on Love Field operations imposed by the Use Agreement, American is not "fit, willing, and able" to conduct operations at Love Field. The Department's Order, served on April 23, 1998, was therefore in error.

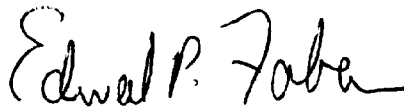
American brought the erroneous certification to Legend's attention for the first time in its "Application for Certification Amendment (Love Field)" filed on May 6, 1998. In that document, American seeks to capitalize on the erroneous certification and expand

² Legend is filing a single Answer to the applications in Docket Nos. 98-3817, 98-3818, 98-3189, and 98-3120.

it to other American certificates.³ Legend is filing this Petition for Reconsideration immediately upon receiving a copy of the Department's April 23, 1998 Order Transferring and Reissuing Certificates. If necessary, Legend seeks leave to file the Petition for Reconsideration outside the 20-day period established by 14 C.F.R. § 302.37.

WHEREFORE, for all the foregoing reasons, Legend respectfully requests that the Department reconsider Order 98-4-24 and issue a certificate in full compliance with the contractual restrictions on American's operations at Love Field.

Respectfully submitted,



EDWARD P. FABERMAN
PAUL A. OLSEN
Ungaretti & Harris
1747 Pennsylvania Ave., NW
Suite 900
Washington, D.C. 20006-4604
(202) 778-4460; (202) 778-4450
fax: (202) 331-1486

Counsel for Legend Airlines

³ In the Application, American requests language that "mirrors the condition of the certificate of public convenience and necessity issued last month by Order 98-4-24, April 23, 1998, to American Eagle Airlines, Inc."