



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

Issued by the Department of Transportation
on the 27th day of December, 2007

Joint application of

**ABX AIR, INC., CAPITAL CARGO
INTERNATIONAL AIRLINES, INC., and
AIR TRANSPORT INTERNATIONAL, LLC**

Docket DOT-OST-2007-0068

for an exemption from the provisions of
49 U.S.C. § 41105

ORDER GRANTING EXEMPTION

Summary

By this order, we exempt ABX Air, Inc. (“ABX”), Capital Cargo International Airlines, Inc. (“CCIA”), and Air Transport International, LLC (“ATI”), hereinafter the “Joint Applicants,” from the provisions of section 41105 of Title 49 of the United States Code (the Statute), subject to certain conditions.

Background

On November 7, 2007, in accordance with the provisions of section 204.5 of our rules (14 CFR 204.5) requiring air carriers to notify us of substantial changes affecting their operations, ABX Holdings, Inc. (“ABX Holdings”), a wholly owned subsidiary of ABX Air, and CHI Acquisition Corp., a wholly owned subsidiary of ABX Holdings, advised the Department that it had entered into an agreement to acquire all or substantially all of the outstanding stock of Cargo Holdings International, Inc. (“CHI”), the parent company of CCIA and ATI. According to the parties, prior to the closing of the transaction, ABX will become a wholly owned subsidiary of ABX Holdings,¹ and CHI Acquisition Corp. will merge with CHI, with CHI becoming a wholly owned subsidiary of ABX Holdings.

Thus, on November 8, 2007, ABX, CCIA, and ATI jointly filed the subject application requesting an exemption from section 41105 of the Statute. The Department has held that a stock acquisition resulting in common control of two or more carriers having international route

¹ By Order 2007-6-18, issued June 29, 2007, the Department disclaimed jurisdiction over the reorganization of ABX.

authority constitutes a *de facto* certificate transfer subject to section 41105. The relief requested here would allow the Joint Applicants to operate under the common ownership of ABX Holdings pending the Department's action on a contemporaneously filed *de facto* transfer application.² In support of this request, the Joint Applicants state that, upon consummation of the transaction, while ABX, CCIA, and ATI will be subsidiaries of ABX Holdings, each will remain a separate entity and will be operated as a separate brand. They further contend that grant of the exemption request would be consistent with the past practice of the Department.

ABX Air holds interstate scheduled all-cargo certificate authority,³ as well as foreign all-cargo certificate authority.⁴ It also holds exemption authority to conduct foreign scheduled flights (1) between points in the United States and points in Colombia and beyond to points in the Western Hemisphere;⁵ and (2) between Los Angeles, California, on the one hand, and Guadalajara and Mexico City, Mexico, on the other hand.⁶

CCIA holds interstate scheduled and foreign charter all-cargo certificate authority,⁷ and recently received blanket open-skies authority to engage in foreign scheduled all-cargo operations.⁸ The company also holds exemption authority to engage in foreign scheduled all-cargo air transportation from Toledo, Ohio, on the one hand, and Saltillo, Guadalajara, and Monterrey, Mexico, on the other hand.⁹

ATI holds interstate scheduled certificate authority,¹⁰ as well as blanket open-skies all-cargo certificate authority.¹¹

No answers opposing the Joint Applicants' exemption request were filed.

² On November 8, 2007, concurrent with their exemption application in Docket DOT-OST-2007-0068, ABX, CCIA, and ATI jointly filed an application in Docket DOT-OST-2007-0067 for the Department's approval under 49 U.S.C. § 41105 of the *de facto* transfer of the economic authorities held by CCIA and ATI to CCIA and ATI under the ownership of ABX Holdings. No answers were filed.

³ See Order 89-3-30, issued March 14, 1989.

⁴ See Order 2007-7-4, issued May 7, 2007. In this order, the Department granted blanket open-skies all-cargo certificate authority to several air carriers, including, ABX, ATI, and CCIA.

⁵ See Notice of Action Taken, dated August 9, 2007, in Docket DOT-OST-2005-21834.

⁶ See Notice of Action Taken, dated October 15, 2007, in Docket DOT-OST-2007-29318 and Docket DOT-OST-2007-29319.

⁷ See Order 96-6-18, issued June 7, 1996.

⁸ See Order 2007-7-4, issued May 7, 2007.

⁹ See Notice of Action Taken, dated December 12, 2005, in Docket DOT-OST-2005-22149. CCIA also filed an application in Docket DOT-OST-2005-22750, requesting that the Department issue it a certificate of public convenience and necessity to engage in foreign scheduled air transportation of property and mail between Toledo, Ohio, on the one hand, and Saltillo, Guadalajara, and Monterrey, Mexico, on the other hand.

¹⁰ See Order 94-9-34, issued September 23, 1994. In this order, the Department granted ATI authority to conduct interstate scheduled air transportation of persons, property, and mail as a U.S. certificate air carrier. However, since ATI did not provide evidence from the Federal Aviation Administration authorizing the transport of passengers in scheduled service, ATI's interstate scheduled certificate is limited to operations involving the transport of property and mail.

¹¹ By Order 94-10-6, issued September 23, 1994, the Department issued ATI effective certificate authority to engage in foreign scheduled all-cargo service to Austria, Belgium, Denmark, Germany, Finland, France, Ireland (Shannon), Luxembourg, The Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom. This authority was superseded by the blanket open-skies all-cargo certificate authority granted to ATI by Order 2007-7-4.

Decision

We have decided to grant the Joint Applicants' request for an exemption from the provisions of section 41105 until we have ruled on the *de facto* transfer request. The Joint Applicants correctly noted that our grant of exemptions in cases such as this is contingent upon the carriers involved, in this case ABX, CCIA, and ATI remaining separate and independently operated corporations until a ruling has been made in the underlying *de facto* transfer case. In this case, as in previous cases,¹² we see no reason to withhold exemption authority pending Departmental action on the certificate transfer application. As long as ABX, CCIA, and ATI remain separate entities, should we disapprove the proposed transfer, either in whole or in part, ABX Holdings could divest itself of CCIA and ATI. The Joint Applicants should not construe our grant of this exemption as a decision to approve the related *de facto* transfer application or any aspect of that application.

ACCORDINGLY,

1. We exempt ABX Air, Inc., Capital Cargo International Airlines, Inc., and Air Transport International, LLC from the provisions of section 41105 of the Statute, subject to the condition that ABX Air, Inc., Capital Cargo International Airlines, Inc., and Air Transport International, LLC continue to be maintained and operated as separate corporations.
2. This authority shall be effective until 90 days after the Department issues its final order on the joint application of ABX Air, Inc., Capital Cargo International Airlines, Inc., and Air Transport International, LLC in Docket DOT-OST-2007-0067 for approval of a transfer of route authority under section 41105 of the Statute.
3. We may amend, modify, or revoke this order at any time and without hearing.
4. We will serve a copy of this order on the persons listed in Attachment A.

By:

MICHAEL W. REYNOLDS
Deputy Assistant Secretary
for Aviation and International Affairs

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

¹² See Order 89-1-60, p. 4; Order 97-9-3, p. 3; Order 97-11-8, p. 5; Order 99-4-5, p. 4; and Order 2001-9-16, p. 4.

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