

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION  
98 JUN 11 AM 10:15  
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 )  
-----

**REPLY OF LEGEND AIRLINES, INC.**  
**IN SUPPORT OF PETITION FOR RECONSIDERATION**

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) 358-8200  
fax: (214) 358-8282

DATED: June 10, 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 )  
-----

**REPLY OF LEGEND AIRLINES, INC.  
IN SUPPORT OF PETITION FOR RECONSIDERATION**

Legend Airlines, Inc., (“Legend”) requested 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 on May 22, 1998. The Petition contained adequate justification for (a) reconsideration of the Order and (b) consideration of Legend’s petition outside the 20-day response period established by 14 C.F.R. § 302.37. In opposition to Legend’s petition, American<sup>1</sup> objects solely to the timing of Legend’s filing. Because Legend has fulfilled the requirements for consideration of its Petition, American’s attempt to obtain its unforeseen certificate amendment without hearing of any

---

<sup>1</sup> This Reply refers to Simmons Airlines, Inc. d/b/a American Eagle and American Eagle Airlines, Inc., jointly as “American” because the entities are wholly owned subsidiaries of American Airlines.

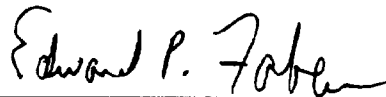
sort should be rejected. The Department should consider Legend's Petition, reopen the matter, and amend the American Eagle certificate appropriately.

Pursuant to 14 C.F.R. § 302.37, the Department may consider an untimely petition for reconsideration in cases of "unusual and exceptional circumstances, constituting good cause for movant's inability to meet the established procedural dates." Such circumstances are present here. Legend was not on the service list for the Order in this matter, which was issued on April 23, 1998. Legend had no knowledge of the potential change to American's Love Field authority until American quoted from the Order in a May 6, 1998 filing. American did not include a copy of Order with its May 6 filing thus frustrating Legend's attempts to obtain a copy of the Order.

Legend was unable to obtain a copy of the Order until after the reconsideration period expired on May 13, 1998. Within days of obtaining a copy of the April 23 Order, Legend filed its Petition for Reconsideration. Legend thus acted as promptly as possible under the circumstances. Because American never provided Legend with a copy of the Order, while relying on it to obtain other certificate amendments, it has no legitimate basis for complaining that Legend's Petition for Reconsideration was filed 9 days after the reconsideration period expired. Moreover, Legend has expended significant legal resources in response to American's and its surrogates' attempts to keep Legend from initiating operations. Rewarding American for inundating Legend through initiation of numerous concurrent lawsuits, applications, and other actions would be inconsistent with the public interest. In these circumstances it is in the public interest to accept Legend's Petition for Reconsideration.

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

Submitted: June 10, 1998