

**CORRECTION\***  
(served June 15, 2004)  
to Order 2004-5-23  
Served: May 28, 2004



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC**

Issued by the Department of Transportation  
on 29<sup>th</sup> day of March 2004

**Applications of**

**Continental Airlines, Inc.**

**Dockets OST-2001-9622**

**Federal Express Corporation**

**OST-1996-1530**

**Florida West International Airways, Inc.**

**OST-1997-2646**

**Polar Air Cargo, Inc.**

**OST-1999-6425**

**United Air Lines, Inc.**

**OST-1997-2911**

**OST-1997-2046**

**for certificates of public convenience and necessity  
under section 41102 of Title 49 U.S.C. and the orders  
and regulations of the Department of Transportation**

**ORDER ISSUING CERTIFICATES**

The captioned applicants seek grant, renewal, and/or amendment of certificates of public convenience and necessity under section 41102 of Title 49 of the United States Code. The applications are fully described in the attachments to this order. Because the public convenience and necessity bases for granting these applications are clear, and the applications are not controversial, it is appropriate to use this simplified, Subpart B procedure to grant the requested authority.<sup>1</sup>

\*Corrects Order 2004-5-23, served May 28, 2004, to include Chile in Polar's certificate for Route 651. Only Polar's certificate is attached to this correction.

<sup>1</sup> 14 CFR 302.212 *et seq.* Under Rule 33(b) we may, in our discretion, omit a tentative decision in proceedings under Subpart B and proceed directly to a final decision.

The applicants have filed and perfected each application as required by 14 CFR 201 and served it as required by 14 CFR 302.203(b). Each application was summarized in the Federal Register, as cited in the relevant descriptive attachment, and was also summarized in the Department's published weekly list of applications filed. These notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Except to the extent noted no answers to these applications were filed.

#### Public Convenience and Necessity

We find that grant or amendment of these certificates is consistent with the public convenience and necessity. Where, as noted, the services authorized are the subject of a bilateral agreement, the certificate is consistent with the agreement and uses rights for which the United States has exchanged valuable operating rights. For authority which is not the subject of a bilateral agreement, the grant is consistent with the overall state of aviation relations between the United States and the foreign countries involved. All of the authority conferred here contributes to the variety of price and service options available to travelers and shippers.

#### Fitness/Citizenship

Each applicant is a citizen of the United States as defined in 49 U.S.C. 40102(a)(15). Each is an operating certificated air carrier for which the authority at issue here would not constitute a substantial change in operations that would require further review by the Department. No information has come to our attention which leads us to question the fitness of the applicants to conduct air transportation operations. Therefore, on the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we find each applicant is fit, willing and able to provide the services authorized.

#### Terms, Conditions and Limitations

Each certificate of public convenience and necessity is subject to the standard terms, conditions, and limitations we consistently impose in the public interest. Duration of certificate authority is determined by the nature of the routes at issue. Where routes may be served by multiple U.S. carriers, without restrictions on additional entrants, the certificates are of indefinite duration. Where limited-entry routes are involved, we issue temporary, experimental certificates of five years' duration under 49 U.S.C. 41102(c).<sup>2</sup>

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<sup>2</sup> 14 CFR Part 399.120.

The certificates issued to Federal Express to serve China, and United to serve South Africa, Colombia, Argentina, and Brazil are granted for a five-year term; the certificates issued to Continental to serve Peru, Florida West to serve Peru and Chile, and Polar to serve various countries are for an indefinite duration.

### Pendente Lite Exemptions

For those services operated under current exemptions, those exemptions will expire in accordance with their own terms 90 days after we submit this order for review under 49 U.S.C. 41307. For those routes operated under expired exemptions and kept in force by 5 U.S.C. 558(c), the exemption renewal applications on file will be dismissed by separate order, upon the effectiveness of the corresponding certificates of public convenience and necessity. The attachments cite the relevant currently held authority.

### Findings and Conclusions

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

1. It is consistent with the public convenience and necessity to amend or issue each applicant a certificate in the form attached;
2. Each applicant is a citizen of the United States and is fit, willing and able to perform properly the foreign air transportation described in the attached certificate or certificate amendment and to conform to the provisions of Subtitle VII of Title 49, United States Code (Transportation), and to the Department's rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the attached certificates and certificate amendments be subject to the terms, conditions, and limitations contained in and attached to those certificates and to such others required by the public interest as the Department may prescribe;
4. Except as otherwise noted in the attachments, the issuance of each of these certificates and certificate amendments does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations;<sup>3</sup> and
5. The public interest does not require an oral evidentiary hearing or a show-cause proceeding on any of these applications. There are no material, determinative issues of fact requiring such procedures for their resolution.

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<sup>3</sup> Our finding is based on the fact that grant of each application would not result in a near-term increase in annual fuel consumption in excess of 10 million gallons.

ACCORDINGLY,

1. We amend or issue in the form attached, certificates of public convenience and necessity to the applicants listed in the caption of this order;
2. We dismiss, as moot, the application of Polar Air Cargo to the extent that it seeks certificate authority to serve the Argentina and Grenada markets;
3. We grant all motions for leave to file otherwise unauthorized documents in the captioned dockets;
4. We deny United's application in Docket OST-1997-2046 to the extent that it seeks to renew U.S.-Brazil authority on segments 1 and 6 for an indefinite duration;
5. To the extent not granted or dismissed, we deny all motions and requests in these dockets;
6. We will not entertain petitions for reconsideration of this order;<sup>4</sup>
7. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order and the attached certificates and certificate amendments shall become effective upon the 61st day after its submission for section 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;<sup>5</sup> and
8. We will serve this order on the parties to the captioned dockets of this order, the Ambassador in Washington, DC of each country that the applicants seek authority to serve, the U.S. Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration.

By:

**KARAN K. BHATIA**  
Assistant Secretary  
for Aviation and International Affairs

(SEAL)

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<sup>4</sup> All parties have had a full opportunity to comment on the applications filed. In each case, no objections were filed to the applications for new or amended certificate authority included in this order.

<sup>5</sup> This order was submitted for section 41307 review on March 29, 2004. On May 25, 2004, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

Polar Air Cargo, Inc.

Amendment of Certificate for **Route 651**

**Filed:** April 16, 2002    **Docket:** OST-1999-6425    **Notice:** 67 FR (37907) 5/30/02

**I. Authority Sought:** Scheduled foreign air transportation of property and mail between a point or points in the United States and the following countries:

Angola	Gambia, The	Peru
Antigua & Barbuda	Grenada	Pitcairn Islands
Anguilla	Guadeloupe	Rwanda
Argentina	Guinea	Samoa
Bangladesh	Guinea-Bissau	Sao Tome & Principe
Belize	Guyana	Serbia-Montenegro
Benin	Haiti	Seychelles
Bermuda	Italy	Sierre Leone
Bhutan	Kazakhstan	Solomon Islands
Bolivia	Kiribati	Somalia
Burkina Faso	Laos	St. Barthelemy
Burundi	Lesotho	St. Kitts & Nevis
Cambodia	Madagascar	St. Lucia
Cameroon	Maldives	St. Vincent & Grenadines
Canada	Mali	Suriname
Cape Verde	Marshall Islands	Swaziland
Cayman Islands	Martinique	Togo
Central African Republic	Mauritius	Tonga
Chad	Micronesia, Federated States of	
Chile	Mongolia	Turks and Caicos
Colombia	Montserrat	Tuvalu
Comoros	Mozambique	Vanuatu
Congo, Republic of	Myanmar	Virgin Islands (U.K.)
Cook Islands	Nauru	Wallis/Futuna Islands
Cyprus	Nepal	Yemen
Djibouti	New Caledonia	Zambia
Dominica	Niger	
Equatorial Guinea	Nigeria	
Eritrea	Niue	
France	Palau	
French Polynesia	New Guinea	
Gabon		

- II. Relevant Currently Held Authority:** Polar currently holds broad certificate authority on Route 651 between U.S. points and various countries. (See Order 99-12-7.)
- III. Pleadings:** No answers were filed.
- IV. Public Convenience and Necessity:** The authority requested is consistent with either the governing aviation agreement or the overall state of aviation relations with the foreign countries involved. Polar was granted certificate authority to serve Argentina on Route 651 by Order 2002-7-31, and granted certificate authority to serve Grenada on Route 651 by Order 99-12-7. In these circumstances, we have decided to dismiss that portion of Polar's application to the extent it seeks duplicative authority to serve Argentina and Grenada.
- V. Fitness and Citizenship:** Polar has previously been found to be a citizen of the United States and fit, willing, and able to provide scheduled foreign air transportation of property and mail as a certificated air carrier under §41102 of Title 49 U.S.C. See, e.g. Order 2002-7-31.
- VI. Fuel:** Given the large number of countries Polar seeks to serve, it is possible that the services proposed would exceed a near-term increase in annual fuel consumption in excess of 10 million gallons, and thus, that award of such authority would constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined by §313.4(a)(1) of the Department's regulations. To the extent Polar's service would exceed the 10 million gallon provision, we find that the additional service to be provided under this authority and resulting public benefits outweigh any adverse effects that may be caused by the increased fuel consumption.
- VII. Terms, Conditions and Limitations:** Standard. We will award the authority requested by adding the various countries to Polar's certificate for Route 651. The attached certificate awards authority between a point or points in the United States and the countries at issue, subject to compliance with the respective bilateral aviation agreements. As a result, for several countries the applicant can only provide service between the United States and/or foreign gateways specified in the relevant agreement.
- VIII. Duration:** Indefinite.



**Certificate of Public  
Convenience and Necessity  
for**

**Route 651  
(as reissued)**

**This Certifies That**

**Polar Air Cargo, Inc.**

**is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of property and mail.**

**This Certificate is not transferable without the approval of the Department of Transportation.**

**By Direction of the Secretary**

**Issued by Order 2004-5-23  
On March 29, 2004  
Effective on May 25, 2004**

**Karan K. Bhatia  
Assistant Secretary for Aviation  
and International Affairs**

Terms, Conditions and Limitations

Polar Air Cargo, Inc. for **Route 651**

Is authorized to engage in scheduled foreign air transportation of property and mail:

Between a point in the United States and:

**(New authority in bold)**

Albania	<b>Cameroon</b>	<b>Gambia</b>
Algeria	<b>Canada</b>	Georgia
<b>Angola</b>	<b>Cape Verde</b>	Germany
<b>Antigua &amp; Barbuda</b>	<b>Cayman Islands</b>	Ghana
<b>Anguilla</b>	<b>Central African Republic</b>	Greece
Argentina	<b>Chad</b>	Grenada
Armenia	Chile	<b>Guadelope</b>
Aruba	<b>Colombia</b>	Guatemala
Australia	<b>Comoros</b>	<b>Guinea</b>
Austria	Congo, Democratic Republic of	<b>Guinea-Bissau</b>
Azerbaijan	<b>Congo, Republic of</b>	<b>Guyana</b>
Bahamas	<b>Cook Islands</b>	<b>Haiti</b>
Bahrain	Côte d'Ivoire	Honduras
<b>Bangladesh</b>	Costa Rica	Hong Kong
Barbados	Croatia	Hungary
Belarus	<b>Cyprus</b>	Iceland
Belgium	Czech Republic	India
<b>Belize</b>	Denmark	Indonesia
<b>Benin</b>	<b>Djibouti</b>	Ireland
<b>Bermuda</b>	<b>Dominica</b>	Israel
<b>Bhutan</b>	Dominican Republic	<b>Italy</b>
<b>Bolivia</b>	Egypt	Jamaica
Bosnia and Herzegovina	El Salvador	Jordan
Botswana	Estonia	<b>Kazakhstan</b>
Brunei Darussalam	Ethopia	<b>Kiribati</b>
Bulgaria	<b>Equatorial Guinea</b>	Kenya
<b>Burkina Faso</b>	<b>Eritrea</b>	Korea, Republic of
<b>Burundi</b>	Fiji	Kuwait
<b>Cambodia</b>	Finland	Kyrgyzstan
	<b>France</b>	
	<b>Gabon</b>	

<b>Laos</b>	<b>Papua New Guinea</b>	<b>Turks &amp; Caicos</b>
Latvia	Paraguay	<b>Tuvalu</b>
<b>Lesotho</b>	<b>Peru</b>	Uganda
Liberia	<b>Pitcairn Islands</b>	United Arab Emirates
Lithuania	Poland	United Kingdom
Luxembourg	Portugal	Uruguay
<b>Madagascar</b>	Qatar	Uzbekistan
Macau	Romania	<b>Vanuatu</b>
Macedonia	<b>Rwanda</b>	<b>Virgin Islands (U.K.)</b>
Malawi	<b>Samoa</b>	<b>Wallis/Futuna Islands</b>
Malaysia	<b>Sao Tome &amp; Principe</b>	<b>Yemen</b>
<b>Maldives</b>	Senegal	<b>Zambia</b>
<b>Mali</b>	<b>Serbia-Montenegro</b>	Zimbabwe
Malta	<b>Seychelles</b>	
<b>Marshall Islands</b>	<b>Sierre Leone</b>	
<b>Martinique</b>	Singapore	
<b>Mauritius</b>	Slovakia	
<b>Micronesia, Federal States of</b>	Slovenia	
Moldova	<b>Solomon Islands</b>	
<b>Mongolia</b>	<b>Somalia</b>	
<b>Montserrat</b>	South Africa	
Morocco	Spain	
<b>Mozambique</b>	Sri Lanka	
<b>Myanmar</b>	<b>St. Barthelemy</b>	
Namibia	<b>St. Kitts &amp; Nevis</b>	
<b>Nauru</b>	<b>St. Lucia</b>	
<b>Nepal</b>	<b>St. Vincent &amp; Grenadines</b>	
Netherlands	<b>Suriname</b>	
Netherlands Antilles	<b>Swaziland</b>	
<b>New Caledonia</b>	Sweden	
New Zealand	Switzerland	
Nicaragua	Tajikistan	
<b>Niger</b>	Taiwan	
<b>Nigeria</b>	Tanzania	
<b>Niue</b>	<b>Togo</b>	
Norway	<b>Tonga</b>	
Oman	Trinidad and Tobago	
Pakistan	Tunisia	
<b>Palau</b>	Turkey	
Panama	Turkmenistan	

This authority is subject to the following conditions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying the freight shipments).
- (3) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights and has notified the foreign country(ies) involved that any such selected carrier(s) has the required authority. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (4) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (5) The holder's authority is effective only to the extent that such operations comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(1)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve the markets where U.S. carrier entry is limited unless the holder first notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in the holder's authority by virtue of the route integration authority granted here, but that are not then being used by the holder, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(11) The authority to serve South Africa shall expire January 12, 2005, unless the Department earlier suspends, modifies, or deletes the authority.

\*As reissued by  
Order 2004-5-23  
Route 651  
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This certificate shall become effective May 25, 2004; provided, however, that prior to the date on which the certificate would otherwise become effective, the Department, either on its own initiative or upon the timely filing of a petition for reconsideration of the order issuing this certificate, may by order or orders extend such effective date from time to time.

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\*This certificate, originally issued by Order 94-7-4, reissued by Orders 94-7-12, 96-5-9, and 99-12-7, and amended by Order 2002-7-31, is further reissued to reflect new authority in numerous foreign markets. The reissued certificate also incorporates revised standard terms and conditions applicable to U.S. carriers.