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Order 2004-10-13

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

Served: October 22, 2004

Issued by the Department of Transportation
on the 25th day of August, 2004

Application of

**SATA INTERNACIONAL-SERVICIOS E TRANSPORTES
AÉREOS, S.A.**

Docket OST-1999-6409 - 6

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

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

Summary

In this order we are issuing SATA Internacional-Servicios e Transportes Aéreos, S.A. (SATA) an initial foreign air carrier permit to engage in charter foreign air transportation of passengers and/or cargo between Portugal and the United States consistent with the U.S.-Portugal open-skies aviation agreement.

Application

By application filed October 25, 1999, as amended, SATA requests an initial foreign air carrier permit to enable SATA to conduct charter services between Portugal and the United States consistent with the provisions of the open-skies aviation agreement between the United States and Portugal.¹

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

No answers were filed in response to SATA's permit application.

¹ Most recently, on February 11, 2003, we renewed SATA's exemption authority to conduct charter services between Portugal and the United States for a two year period. See Notice of Action Taken, dated February 11, 2003, in Docket OST-1999-6408.

Decision

We have reviewed the record in this case and have decided to grant the application using simplified Subpart B procedures.² The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.³ 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 SATA is qualified to conduct the proposed operations.

Public Interest Considerations

On May 30, 2000, the United States and Portugal signed an open-skies bilateral aviation agreement (The Agreement) that provides broad rights for the designated carriers of each side, including charter rights to conduct the services proposed by SATA.⁴

Operational and Financial Fitness

We find that SATA is operationally and financially fit to conduct the operations at issue here. SATA was first incorporated on December 10, 1990, under the name Oceanair-Transportes Aéreos Regionais, S.A. SATA Air Acores subsequently became the majority shareholder of the company and on February 20, 1998, the name of the company was changed to its current name. In 1998, the Government of Portugal authorized SATA to commence domestic and international scheduled and charter services. SATA received initial Department exemption authority on January 14, 2000. SATA holds effective authority from its homeland to conduct the proposed operations.⁵ SATA has experienced management personnel, and has had no safety violations, fatal accidents or tariff violations in the last five years. As noted above, on February 11, 2003, we renewed SATA's exemption authority to conduct charter services between Portugal and the United States for a two year period. SATA currently conducts charter operations between Portugal and Boston with A-310-300 aircraft. By memorandum dated April 12, 2004, the Federal Aviation Administration advised us that it knows of no reason why SATA's request for a foreign air carrier permit should not be approved. Finally, we have verified SATA's compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (aircraft accident liability insurance requirements) and 129 (FAA Operations Specifications).

² 14 CFR 302.210 (a)(2) and 302.213.

³ 64 FR 61175-61176, November 9, 1999.

⁴ The Agreement formally entered into force on May 9, 2002.

⁵ On June 15, 1999, Portugal's Civil Aviation Institute issued SATA an Air Operator Certificate to conduct scheduled and charter operations. By diplomatic note dated January 19, 2000, Portugal's Ministry of Foreign Affairs designated SATA to conduct the charter services at issue here.

SATA has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds. As previously noted, SATA was authorized by its government to commence domestic and international services in 1998. For calendar year 2002, SATA reported total assets of \$ 39.2 million, total liabilities of \$ 32.9 million and owners' equity of \$ 6.3 million. For calendar year 2001, SATA reported a net profit of approximately \$ 281 thousand. For calendar year 2000, SATA reported total assets of \$ 34.5 million; total liabilities of \$ 29.1 million, and owners' equity of \$ 5.4 million. For the year ending December 31, 2001, SATA reported a net loss of \$ 6.8 million.

Ownership and Control

SATA is wholly owned by SATA Air Acores-Servico Acoreano de Transportes Aéreos, E.P., a company wholly owned by the Regional Government of Azores Autonomous Region. Although the company is wholly owned by the regional government, the government does not participate in the managerial decisions of SATA or the parent company. Each company has its own management. All of SATA's officers, directors and key management personnel are citizens of Portugal.

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 SATA a foreign air carrier permit in the form attached;
2. SATA 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 § 313.4(a)(1) of our Regulations;⁶ and
5. The public interest does not require an oral evidentiary hearing on the application.

⁶ 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.

ACCORDINGLY,

1. We issue, in the form attached, an initial foreign air carrier permit to SATA authorizing it to engage in charter foreign air transportation of passengers (and their accompanying baggage) and/or cargo between any point or points in Portugal and any point or points in the United States;
2. SATA is also authorized to engage in other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters;
3. The exercise of the privileges granted above are subject to SATA's compliance with the conditions listed in Appendix A;
4. To the extent not granted, we deny all requests for relief in Docket OST-1999-6409;
5. 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;⁷ and
6. We will serve a copy of this order on SATA; the Ambassador of Portugal in the United States; the Department of State; and the Federal Aviation Administration (New York-IFO).

By:

KARAN BHATIA
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*

⁷ This order was submitted for § 41307 review on August 25, 2004. On October 21, 2004, we received notification that the President's designee's under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
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PERMIT TO FOREIGN AIR CARRIER

SATA Internacional-Servicos e Transportes Aéreos, S.A.

A Flag Carrier of Portugal

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code and the orders, rules, and regulations of the Department of Transportation, to engage in charter foreign air transportation of passengers (and their accompanying baggage) and/or cargo as follows:

Between any point or points in Portugal and any point or points in the United States.

The holder shall also be authorized to engage in other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

In the conduct of charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third country point, provided that, except with respect to cargo charters, such charter traffic is carried on a flight that serves Portugal for purposes of carrying traffic between the United States and Portugal.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

This permit shall be effective on October 21, 2004. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit

from the service which may be operated by airlines designated by the Government of Portugal (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of Portugal in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and Portugal. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and Portugal become parties.

The Department of Transportation has executed this permit and affixed its seal August 25, 2004.

By:

KARAN BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Foreign Carrier Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI 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;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland, except as otherwise provided for in the U.S.-U.K. Air Services Agreement;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.