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THE WHITE HOUSE

WASHINGTON

March 4, 1986

MEMORANDUM FOR MATTHEW V. SCOCOZZA
ASSISTANT SECRETARY FOR POLICY AND
INTERNATIONAL AFFAIRS
DEPARTMENT OF TRANSPORTATION

FROM: JOHN G. ROBERTS *JGR*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Department of Transportation
International Aviation Decision:
Nippon Cargo Airlines Company, Ltd.

The attached correspondence is referred to you pursuant to Section 4 of Executive Order 11920. That provision directs individuals within the Executive Office of the President to "follow a policy of...referring any written communication from an interested private party [under section 801], or an attorney or agent for any such party, to the appropriate department or agency outside the Executive Office of the President."

Mr. Hart telephoned me about the application of Nippon Cargo Airlines, with which I was unfamiliar. I advised Mr. Hart that if the matter were a Section 801 case, the Executive Order would prohibit me from discussing it with him. Shortly thereafter, I received this correspondence. I have advised Mr. Hart that, pursuant to Section 4 of the Executive Order, future contact should be nonexistent, not "minimal."

WILLIAMS & JENSEN

A PROFESSIONAL CORPORATION

LAWYERS

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MARY LYNNE WHALEN
J. D. WILLIAMS

February 25, 1986

John G. Roberts, Jr., Esquire
Associate Counsel to the President
112 Old Executive Office Building
Washington, D. C. 20500

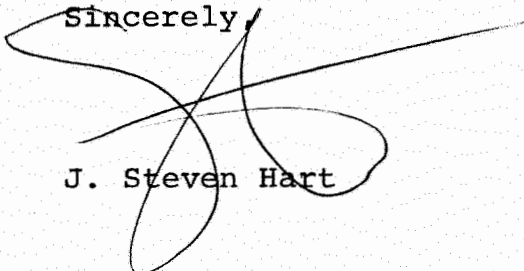
Dear John:

You were correct. The Nippon Cargo Airlines (NCA) application falls under section 801. Apparently, the NCA issue had not made it to your desk.

I enclose a copy of the Department of Transportation decision and a recent news article reflecting Japan's strong interest in a prompt resolution of this issue. A Japanese delegation will arrive here on March 3 and hopes to be greeted with good news.

I thought you might be interested. Due to the 801 restrictions and the fact that our client, NCA, is a foreign corporation, I will keep future contact minimal.

Sincerely,



J. Steven Hart

JSH/ajb
Enclosures

Nakasone Seeks Reagan's Aid in Talks

By A.E. CULLISON

Journal of Commerce Staff

TOKYO — President Ronald Reagan has been sent a personal letter by Prime Minister Yasuhiro Nakasone seeking his assistance in obtaining key concessions for Japan during the civil aviation talks scheduled to open on March 3.

Government officials in Tokyo disclosed Thursday that Mr. Nakasone appealed to President Reagan for an increase in the number of flights permitted to Nippon Cargo Airlines on routes to the United States and to allow Japan Air Lines to launch freight service to Chicago.

According to the Japanese officials, the Prime Minister also asked President Reagan to use his influence to see that the U.S. negotiators agree to end the alleged disparity in the number of designated companies permitted to schedule their own number of flights.

In addition, Mr. Nakasone's letter requested the president to support Japan's efforts to obtain a revision of the beyond rights issue between the two countries.

Under the present bilateral civil aviation pact, JAL, the Japanese flag carrier, is the only designated airline from Japan allowed to operate its own number of flights. In contrast, three U.S. airlines are designated carriers. But the U.S. authorities have pointed out that it was the

Japanese who, since 1970, have insisted that JAL be the sole designated carrier for Japan.

The Japanese have been complaining as well that JAL's beyond routes are too limited at a time when the U.S. airlines themselves enjoy freedom in principle on routes involving Japan.

Japan's negotiators have been pressing the United States to agree to permit JAL to fly to South American destinations after stopping in New York and Los Angeles.

It is expected that negotiators from the two nations will launch working-level discussions in Tokyo on Monday to deal with U.S. requests that Japan simplify customs procedures at Japanese airports and that controls on night landings at Narita and Osaka airports be eased.

However, it is likely that the Japanese Prime Minister is counting on President Reagan's help in seeing that the Japanese arguments are also placed on the table in preparation for further consideration when the talks get down to other matters in March.

Japan's prime minister has been under increasing pressures from his own civil aviation authorities and from high-level members of his ruling Liberal Democratic Party, who believe that his administration has

made too many concessions to the United States during recent negotiations. Particularly disturbing to many Japanese has been the Nakasone government's permission for United Airlines to take over all the rights now owned by Pan American World Airways' trans-Pacific division. These rights were purchased by United, including stopovers beyond Japan.

United also has been granted the right to fly 53 flights weekly on trans-Pacific routes, more than the 33 flights currently provided by Pan American, from February 11, and 56 flights from April 28.

From the Japanese point of view, these concessions will place Japan's airlines at a competitive disadvantage. But it is understood that Secretary of State George P. Shultz has promised that the United States will make positive efforts to eliminate the current imbalance in the number of flights between the two countries.

Prime-Minister Nakasone's letter to Mr. Reagan is considered in Tokyo as a move to settle the issues on a political level rather than to leave the problem to the bureaucrats. The official U.S. position for years has been that the present civil aviation agreement between Washington and Tokyo is not unbalanced.

Posted

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

NIPPON CARGO AIRLINES COMPANY,
Docket 42023

NOTICE

The attached decision was submitted to the President pursuant to section 801 of the Federal Aviation Act on February 6, 1986. Public release has been authorized in accordance with the provisions of Executive Order 11920, 41 Fed. Reg. 23665 (June 10, 1976). This is not a final decision since it has not been acted upon by the President.

By:

PHYLLIS T. KAYLOR
Chief, Documentary Services Division

(SEAL)

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

Issued by the Department of Transportation
on the 6th day of February, 1986

Application of :
NIPPON CARGO AIRLINES COMPANY, LTD. : Docket 42023
for a foreign air carrier permit pursuant :
to section 402 of the Federal Aviation :
Act of 1958, as amended :

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

On February 29, 1984, Nippon Cargo Airlines Company, Ltd. (NCA) filed with the Civil Aeronautics Board an application for an initial foreign air carrier permit 1/ to engage in scheduled all-cargo services commencing April 1, 1985, (1) between a point or points in Japan and the coterminal points San Francisco and New York, and (2) between a point or points in Japan and the terminal point New York, New York, via the intermediate point Anchorage, Alaska. 2/ NCA further requested authority to perform cargo charters in accordance with 14 CFR Part 212.

In support of its application, NCA stated that it has been licensed by its government to perform the all-cargo services at issue here, and, by Diplomatic Note dated November 16, 1983, was designated by the Government of Japan in accordance with Article 4(A)(1) of the United States-Japan Air Transport Services Agreement, as amended. 3/

1/ NCA's application was summarized in the Federal Register, 49 FR 9244, March 12, 1984.

2/ On April 9, 1984, NCA amended its application, defining its request for Anchorage intermediate authority as a technical stop.

3/ TIAS 2854, 4158, 5939, 6787, 7333 and 8882.

ANSWERS

During March, 1984, Federal Express Corporation, The Flying Tiger Line Inc., and Transamerica Airlines, Inc., filed answers in response to NCA's permit application. The carriers urged deferral of NCA's application pending resolution of various aviation issues with Japan. Federal Express and Flying Tiger also expressed concerns about possible anticompetitive consequences of NCA's ownership.

Specifically, Federal Express argued that action on NCA's application should be deferred pending the concurrent grant of all-cargo authority to Federal Express or until an indication of willingness by the Government of Japan to grant such authority to Federal Express.

Flying Tiger listed (1) Japanese domination of the air freight market, and the likelihood that NCA's entry would increase Japan's market share, and, (2) the fact that NCA's application cannot be considered independent of Japan Air Lines' request for expanded cargo rights into and beyond the U.S.

Transamerica stated that it had no objection to NCA's application provided the U.S. reached a satisfactory understanding with Japan regarding additional U.S. carrier designations under the bilateral agreement. Transamerica also noted that while NCA sought scheduled as well as charter authority, its Japanese license only provides for the operation of scheduled services.

On May 14, 1984, NCA filed a reply to the answers of Federal Express, Flying Tiger and Transamerica.^{4/}

On June 28, 1984, NCA filed a motion for expeditious treatment of its pending application and was answered by Flying Tiger. On July 18, 1984, NCA responded.^{5/}

RESULTS OF U.S.-JAPAN NEGOTIATIONS

On May 1, 1985, the United States and Japan signed an interim agreement, embodied in a Memorandum of Understanding, which, among other things, provides for NCA to commence its all-cargo services and to continue them

^{4/} NCA's reply was accompanied by a motion for leave to file an otherwise unauthorized document.

^{5/} We will grant all motions to file otherwise unauthorized documents.

until the conclusion of comprehensive revision talks. 6/

On April 30, 1985, we orally granted NCA an exemption, sua sponte, from section 402 of the Act to perform those services provided for in the MOU, until September 6, 1985, or the conclusion of the comprehensive revision talks, whichever was later. This authority was and is subject to our standard conditions applicable to exemption authority, and to NCA's adherence to the terms of the MOU. That exemption authority remains in effect, and NCA is currently conducting operations under that authority.

DECISION

We have decided to issue NCA a foreign air carrier permit authorizing it to perform all-cargo services between Tokyo, Japan, and San Francisco/New York. We have thoroughly reviewed the record and have decided to grant the application using the simplified Subpart Q procedures.7/ The public was informed of the carrier's application by notices in the Federal Register and the CAB's weekly list of applications filed, describing the authority sought and giving interested persons an opportunity to submit evidence and objections to the award of the authority. These notices provided the required notice and filing opportunities. Simplified procedures are appropriate in this case, because there are no material issues of fact which require other procedures.

We are granting NCA the authority it seeks to the extent that it is encompassed by the April 30, 1985, MOU and subject to the conditions and limitations contained in that agreement.

6/ The MOU provides for NCA to operate six (6) wide-body roundtrip all-cargo flights per week on a route between Tokyo and San Francisco/New York as of May 1, 1985. The MOU provides that NCA may increase its frequencies from April 1, 1986, by a percentage equal to the percentage increase in the total air cargo traffic between Japan and the United States for the period January 1, 1985, to December 31, 1985, over the total air cargo traffic for the period January 1, 1984, to December 31, 1984, and similarly for each succeeding year. The MOU also provides that any increased frequencies that become available and are not used may be reserved for later use. The MOU also specified additional rights that would be available to U.S. carriers.

7/ 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

In reaching our decision, as more fully discussed below, we find that, based on the record, NCA is substantially owned and effectively controlled by nationals of Japan, and that it is fit, willing and able to conduct the authorized services and adhere to the provisions of the Act, and our rules, regulations, and requirements.

PUBLIC INTEREST CONSIDERATIONS

The permit authority granted by this order is provided for in the May 1, 1985, Memorandum of Understanding between the United States and Japan.^{8/} On August 13, 1983, NCA was issued a license by the Japanese Ministry of Transport (NCA Exhibit 402, Docket 42023) to perform scheduled "all freight service" over the routing Tokyo-San Francisco-New York. In November 1983, NCA was designated by the Government of Japan under Article 4(A)(1) of the United States-Japan Air Transport Services Agreement to serve Japanese routes 1 and 3 of the Route Schedule appended to the Agreement.

We find that the view of the U.S. carrier respondents that we should defer action on NCA's request until resolution of pending U.S.-Japan aviation issues has been effectively dealt with by the signing of the May 1, 1985 interim agreement, which specifically provides for this authority to be granted to an airline of Japan.^{9/}

We have also considered arguments concerning the possible anticompetitive consequences of NCA's ownership. Although we do not believe that this factor warrants withholding permit authority, we intend to monitor the situation. We also note that the Department of Justice has been fully apprised of the situation and has filed no objections to the issuance of the permit.

NCA'S OWNERSHIP AND CONTROL

NCA was formed on September 21, 1978, by four Japanese shipping companies^{10/} and All Nippon Airways, a domestic Japanese scheduled

^{8/} The authority granted is subject to the limitations of the MOU. Thus, NCA is limited to six flights per week and any request to operate extra sections would require additional authority.

^{9/} The MOU also provides for additional passenger and cargo rights for U.S. carriers. The Department has instituted a case to determine which U.S. carriers should exercise those rights. See Order 85-11-29, November 13, 1985, instituting the U.S.-Japan Gateways Case, Docket 43575.

^{10/} The Japanese shipping companies are Kawasaki Kisen Kaisha, Ltd. ("K" Line); Nippon Yusen Kaisha (NYK Line); Mitsui O.S.K. Lines; and Yamashita-Shinnihon Steamship Co., Ltd. (Y.S. Line). Japan Line, Ltd. (Japan Line) and Showa Line, Ltd. subsequently became stockholders.

carrier. Subsequent stock transactions diversified NCA's ownership. As of April 1, 1984, the company had 6,400,000 shares of stock issued and outstanding, 100% owned by Japanese citizens.11/

OPERATIONAL FITNESS

We find that NCA is operationally fit to conduct the operations at issue here. Biographical data supplied by the applicant demonstrate that all of NCA's officers, directors and key management personnel have considerable transportation experience. NCA management personnel have been drawn from companies with extensive experience in shipping, air freight forwarding, rail and air carrier operations. NCA stated that it would inaugurate its proposed services with dry-leased All Nippon Airways' B-747-200 aircraft to be used exclusively by NCA. Maintenance of NCA's aircraft will be performed in accordance with ICAO standards by All Nippon Airways at Tokyo. Transit checks on the aircraft will be performed under contract supervised by NCA maintenance representatives. NCA stated that it had not been involved in any safety or tariff violations during the five years preceding the filing of the permit application.12/

11/ NCA's stock is issued as follows: "K" Line (10%), NYK Line (10%), Mitsui O.S.K. Lines (10%), Y.S. Line (10%), All Nippon Airways (10%), Japan Line (5%), Showa Line (5%), 23 Japanese Banks (15.47%), 16 Japanese insurance companies (11.09%), and 34 other Japanese citizen companies (13.44%). See Exhibit NCA-103, Docket 42023.

12/ By letter dated March 13, 1984, the CAB requested that the FAA provide a safety and compliance evaluation of NCA. By letter dated March 22, 1984, the FAA's Office of Flight Operations stated that although NCA held no operating authority, it knew of no reason why the CAB should act unfavorably on NCA's pending permit application, so long as it made any authority granted to NCA subject to the customary conditions. A copy of the CAB's letter and the FAA's response have been placed in Docket 42023. On July 18, 1985, the FAA advised the Department that on May 1, 1985, NCA had been issued FAR Part 129 Operations Specifications and it knew of no reason why we should act unfavorably on NCA's application.

FINANCIAL FITNESS

We find that NCA is fit to conduct the operations we are authorizing without exposing the public to undue financial risk. The applicant stated that because its proposed operations were not to commence until 1985 it was unable to provide historical financial statements based on operations. NCA did, however, provide forecast balance sheets for April 1, 1984 and 1985, which are summarized in Appendix A to this order. In addition, NCA provided current balance sheets and profit and loss statements for the seven original NCA stockholders.^{13/} NCA further stated that it does not receive, or expect to receive, financial assistance from the Government of Japan. The applicant stated that it had been able to meet its financial obligations, had never defaulted on transportation commitments, and had never been refused debt financing.^{14/}

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

1. Nippon Cargo Airlines Company, Ltd. is qualified and has been designated by its government to perform the air services described in the attached permit;
2. Nippon Cargo Airlines Company, Ltd. 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. Nippon Cargo Airlines Company, Ltd. is substantially owned and effectively controlled by nationals of Japan;
5. 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 section 313.4(a)(1) of our Regulations;^{15/}
6. The public interest does not require an oral evidentiary hearing on the application; and
7. Except to the extent granted, the application of Nippon Cargo Airlines Company, Ltd. in Docket 42023 should be denied.

^{13/} See Exhibit NCA-300, pages 1-27, Docket 42023.

^{14/} On May 6, 1985, NCA filed the requisite Certificate of Insurance which satisfies the requirements of 14 CFR Part 205.

^{15/} 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 Nippon Cargo Airlines Company, Ltd. a foreign air carrier permit, in the form attached, authorizing it to perform all-cargo services between the terminal point Tokyo, Japan, and the coterminal points San Francisco, California, and New York, New York;
2. Nippon Cargo Airlines Company, Ltd. may operate a maximum of six wide-body roundtrip all-cargo flights per week as of May 1, 1985, and shall be permitted, by subsequent Department order, to increase its frequencies beginning April 1, 1986, by a percentage equal to the percentage increase in the total air cargo traffic between Japan and the United States for the period January 1, 1985, to December 31, 1985, over the total air cargo traffic for the period January 1, 1984, to December 31, 1984, under procedures set forth in the April 30, 1985 MOU, and similarly for each succeeding year (available increased frequencies not used may be reserved for later use);
3. Flights exceeding the number described above are not authorized;
4. The exercise of the privileges granted above are subject to Nippon Cargo Airlines' compliance with the conditions listed in the permit and the Attachment to the permit, and the terms of the April 30, 1985 MOU; and
5. We will grant all motions in Docket 42023 to file otherwise unauthorized documents.
6. Unless disapproved by the President of the United States under section 801(a) of the Act, this order and the permit attached shall become effective on the 61st day after its submission to the President,^{16/} or upon the date of receipt of advice from the President that he does not intend to disapprove the Department's order under that section, whichever is earlier; and
7. We will serve a copy of this order on all persons that have filed pleadings in Docket 42023, the Ambassador of Japan in the United States, the Secretary of State and the Federal Aviation Administration (San Francisco-FSDO #3 and AFS-220).

By:

MATTHEW V. SCOCOZZA
Assistant Secretary for Policy
and International Affairs

(SEAL)

^{16/} This order was submitted to the President on February 6, 1986. The 61st day is April 10, 1986.

SUMMARY OF APPLICATION
NIPPON CARGO AIRLINES
 Docket 42023

Homeland Country: Japan

Authority Covered By Bilateral Agreement: Yes--United States-Japan Air Transport Services Agreement, as amended, and the April 30, 1985, Memorandum of Understanding.

Designated By Its Government: Yes--Exhibit 401, Docket 42023

Holds Government License For Authority Sought: Exhibit 402 - Docket 42023

Operating History: None--new applicant

Aircraft Owned (O) And Leased (L): 2 B-747-200F dry-leased from All Nippon Airways - Aircraft will be used exclusively by NCA.

Aircraft Maintenance Performed By: All Nippon Airways in accordance with ICAO standards.

Financial Indicators (Last 2 years):	April 1, 1985 (forecast) <hr style="width: 50%; margin: 0 auto;"/> (millions)	April 1, 1984 (forecast) <hr style="width: 50%; margin: 0 auto;"/> (millions)
Total Assets	\$ 16.0	\$ 10.0
Total Liabilities	-	\$ 7.0
Owners' Equity	\$ 16.0	\$ 3.0
Operating Profit (Loss)	(No historical financial data based on operations)	

Majority Ownership By Nationals Of: Japan

Effective Control By Nationals Of: Japan

Insurance Coverage: Yes--meets minimum requirements of 14 CFR 205

Insurance Refused Or Involuntarily Canceled During Last 3 Years: No

Refused Debt Financing Last 3 Years: No

Defaulted On Transportation Commitments Last 3 Years: No historical data available

Failed To Meet Current Financial Obligations Last 3 Years: No historical data available

Safety Violations During Last 5 Years: No historical data available

Tariff Violations During Last 5 Years: No historical data available

Subscribes To Standard Permit Conditions Regarding Insurance, to Annex 6 Of the Chicago Convention, and to C.A.B. Agreement 18900: Yes

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

PERMIT TO FOREIGN AIR CARRIER

NIPPON CARGO AIRLINES COMPANY, LTD.

is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation with respect to property, as follows:

Between the terminal point Tokyo, Japan, and the coterminal points San Francisco, California, and New York, New York.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached, and to those contained in Order

This permit shall be subject 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 Japan shall be parties.

This permit shall be effective on . 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 which issued; or (2) upon the effective date of any treaty, convention, agreement or amendment, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designated by the Government of Japan (or in the event of the elimination of any part of the authorized route or routes, the authority granted shall terminate to the extent of such elimination), or (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of Japan in lieu of the holder, or (4) upon the termination or expiration of either the Air Transport Services Agreement between the Government of the United States of America and the Government of Japan effective September 15, 1953, as amended, or of the Memorandum of Understanding ratified May 1, 1985: However, clause (4) of this paragraph shall not apply if, prior to occurrence of the event specified in clause (4), the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States and Japan are or shall become parties.

The Department of Transportation has executed this permit and affixed its seal February 6, 1986.

MATTHEW V. SCOCOZZA
Assistant Secretary for Policy
and International Affairs

(SEAL)

PERMIT TO FOREIGN AIR CARRIER

Docket 42023

The holder's authority to conduct operations under the permit to which this is attached shall also be subject to the following terms, conditions, and limitations:

- (1) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (2) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements for minimum insurance coverage contained in 14 CFR 205;
- (3) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit;
- (4) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) The holder shall conform to the airworthiness and airman competency requirements prescribed by its home Government for international air service;
- (6) Except as specifically authorized by the Department of Transportation, all flights to/from the United States must originate or terminate in the holder's homeland;
- (7) The holder shall not provide the foreign air transportation authorized by this permit unless it holds a currently effective authorization from its Government for such operations and such document is on file with the Department of Transportation;
- (8) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation; and shall be subject to compliance with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (9) This permit cannot be sold or otherwise transferred without explicit Department approval under section 402(g) of the Federal Aviation Act of 1958, as amended.

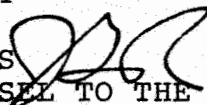
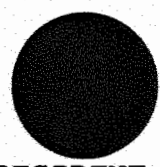
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THE WHITE HOUSE

WASHINGTON

March 7, 1986

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY

FROM: JOHN G. ROBERTS  
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOT International Aviation Decisions:
Certain Canadian Air Carriers and
Nippon Cargo Airlines

Our office has reviewed the above-referenced Department of Transportation International Aviation decisions, and has no legal objection to the procedure that was followed with respect to Presidential review of such decisions under 49 U.S.C. § 1461(a).

We also have no legal objection to OMB's recommendation that the President not disapprove these orders or to the substance of the letter from the President to the Secretary of Transportation.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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I - INCOMING

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Subject: DOT International Aviation Decisions:
Certain Canadian Air Carrier & Upon
Cargo Airlines

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure

- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

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- Type of Response = Initials of Signer
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Comments: _____

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WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/06/86 ACTION/CONCURRENCE/COMMENT DUE BY: 3/13/86

SUBJECT: DOT INTERNATIONAL AVIATION DECISIONS: CERTAIN CANADIAN AIR CARRIER
& NIPPON CARGO AIRLINES

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	LACY	<input type="checkbox"/>	<input type="checkbox"/>
REGAN	<input type="checkbox"/>	<input type="checkbox"/>	POINDEXTER	<input type="checkbox"/>	<input type="checkbox"/>
MILLER	<input type="checkbox"/>	<input type="checkbox"/>	RYAN	<input type="checkbox"/>	<input type="checkbox"/>
BALL	<input type="checkbox"/>	<input type="checkbox"/>	SPEAKES	<input type="checkbox"/>	<input type="checkbox"/>
BUCHANAN	<input type="checkbox"/>	<input type="checkbox"/>	SPRINKEL	<input type="checkbox"/>	<input type="checkbox"/>
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CHEW	<input type="checkbox"/>	<input type="checkbox"/>	THOMAS	<input type="checkbox"/>	<input type="checkbox"/>
DANIELS	<input type="checkbox"/>	<input type="checkbox"/>	TUTTLE	<input type="checkbox"/>	<input type="checkbox"/>
FIELDING	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HENKEL	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HICKS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
KINGON	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please provide any comments/recommendations by Thursday, March 13th. Thank you.

RESPONSE:



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 6, 1986

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Department of Transportation International
Aviation Decisions:

Certain Canadian Air Carriers	Nippon Cargo Airlines
Dockets 40848, 40996, 42197,	Company, Ltd.
42121, 39403, 40410	Docket 42023
and 40411	Date due: April 9, 1986
Date due: March 28, 1986	

The Department of Transportation (DOT) proposes to take the following action with regard to the above international aviation cases:

- Authorize certain Canadian air carriers, to engage in scheduled foreign air transportation of persons, property and mail between Canada and the United States.
- Authorize Nippon Cargo Airlines Company, Ltd., to engage in scheduled foreign air transportation of property between Japan and the United States.

The National Security Council and the Departments of State, Defense, and Justice have not identified any foreign policy or national defense reasons for disapproving the orders in whole or in part.

The Office of Management and Budget recommends that you approve DOT's decisions by signing the attached letter to the Secretary which indicates that you do not intend to disapprove DOT's orders within the 60 days allowed by statute for your review.

Carol T. Crawford
Associate Director for
Economics and Government

Attachments:

DOT letters of transmittal
DOT orders
Letter to the Secretary

Options and Implementation Actions:

- () (1) Approve DOT's orders (DOS, DOD, DOJ, NSC, OMB).
-- Sign the attached letter to the Secretary.
- () (2) Disapprove DOT's orders.
-- Implementation materials to be prepared.
- () (3) See me.

THE WHITE HOUSE

WASHINGTON

Dear Madam Secretary:

I have reviewed the orders proposed by the Department of Transportation in the following cases:

Certain Canadian Air Carriers	Nippon Cargo Airlines
Dockets 40848, 40996, 42197,	Company, Ltd.
42121, 39403, 40410	Docket 42023
and 40411	

I have decided not to disapprove the proposed orders.

Sincerely,

The Honorable Elizabeth Dole
Secretary of Transportation
Washington, D.C. 20590

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 January, 1986

Applications of	:	
	:	
AUSTIN AIRWAYS LIMITED	:	Dockets 40848
AIR ONTARIO LIMITED	:	40996
	:	42197
BRADLEY AIR SERVICES LIMITED	:	42121
d/b/a FIRST AIR	:	
QUEBEC AVIATION LIMITED	:	39403
TORONTO AIRWAYS LIMITED	:	40410
d/b/a TORONTAIR	:	40411
	:	
for foreign air carrier permits under	:	
section 402 of the Federal Aviation Act	:	
of 1958, as amended	:	

ORDER ISSUING FOREIGN AIR CARRIER PERMITS

Applications

Each of the above-noted Canadian carriers filed one or more applications for foreign air carrier permits to conduct scheduled foreign air transportation of persons, property, and mail between specified points in the United States and Canada, using commuter size aircraft (aircraft with 60 or fewer seats). 1/ The carriers rely upon the 1966 Exchange of Notes (Regional Notes) between the United States and Canada as the basis for the authority sought. 2/ The route authority requested by each carrier is as follows:

- 1/ Each application was noticed in the Federal Register. See Attachment B for the Federal Register citation of each application.
- 2/ Also, Kelowna Flightcraft Air Charter Ltd. d/b/a Inter City Air, filed a request in Docket 42095 for authority under the Regional Notes to conduct scheduled service between Penticton, British Columbia, and Spokane, WA. The Civil Aeronautics Board issued the carrier long-term exemption authority, effective August 20, 1984 (see Order 84-10-64), to conduct the service. However, Kelowna has never commenced it. On December 5, 1985, the company informally advised Department staff that it no longer has a firm proposal to conduct Penticton-Spokane service and will withdraw its request in Docket 42095 in the near future.

<u>Carrier</u>	<u>Route Requested</u>
Austin Airways Limited (Austin Airways)	Thunder Bay, Ontario-Minneapolis, MN
Air Ontario Limited (Air Ontario)	London, Ontario-Cleveland, OH Toronto, Ontario-Hartford, CT/ Springfield, MA
Bradley Air Services Limited d/b/a First Air	Ottawa, Ontario-Boston, MA <u>3/</u>
Quebec Aviation Limited (Quebec Aviation)	Quebec City, Quebec-Boston, MA <u>4/</u>
Toronto Airways Limited d/b/a Torontair	Toronto (Buttonville), Ontario- White Plains, NY Toronto (Buttonville), Ontario- Syracuse, NY

Attachment A to this order contains a description of each application, and a discussion of the pleadings in each case. Briefly, answers have been filed to four of the seven applications. Three answers are objections to the grant of authority, because of reciprocity problems between the United States and Canada which existed at the time the answers were filed. As discussed later in this order, a U.S.-Canada intergovernmental agreement now specifically provides for the authority sought by the applicants and effectively responds to the problems which prompted objections to the applications. Therefore, we believe those objections are now moot. The other answer is an objection to the name one applicant has chosen. We discuss, infra, the basis of our decision not to prevent the particular applicant from using its chosen name.

3/ First Air also seeks permission under Part 215 of the Department's rules to use the name First Air. We will dismiss this request as moot, because no additional authority is needed for Bradley Air Services Limited d/b/a First Air to do business under a name that is readily identifiable with the name in which its operating authorization is issued. (See section 215.2 of the Department's rules.)

4/ On November 2, 1984, Quebec Aviation withdrew its request for authority to serve two other routes--Sherbrooke-Boston and Quebec City-Portland, ME. Therefore, we will consider Quebec Aviation's application to the extent it seeks a foreign air carrier permit to serve Quebec City-Boston.

Background

On June 21, 1984, the United States and Canada signed a Memorandum of Consultations (MOC) which, among other things, contains two ad referendum agreements: one providing for an experimental transborder air services program at Mirabel Airport in Montreal, Canada; the second outlining a new exchange of notes on regional, local and commuter services replacing the previous, 1966 notes. In addition, the MOC provides for expeditious action on applications for regional and local services already pending before the respective aeronautical authorities, including the Canadian applications for authority at issue here. The MOC also anticipates that the United States will take expeditious and favorable action on specified Canadian route applications, and anticipates that Canada will take expeditious and favorable action to grant Empire Airlines authority to serve the routes Syracuse-Ottawa and Syracuse-Montreal. 5/

On August 21, 1984, the United States and Canada exchanged diplomatic notes which placed in force the ad referendum agreements entered into on June 21, 1984. Each of the applicants has been granted authority to conduct its proposed operations pursuant to exemption authority issued by the Civil Aeronautics Board or the Department (see Attachment A).

Decision

We have reviewed the record of each case, including the applications, which are summarized in Attachment B, and have decided to grant the requests using the simplified Subpart Q procedures. 6/ The public was informed of each carrier's application by notices in the Federal Register and the Board's weekly list of applications filed, describing the authority sought and giving interested persons an opportunity to submit evidence and objections to the award of the authority. The notices provided the required notice and filing opportunities. Simplified procedures are appropriate in this case, because there are no issues that would require a different process.

5/ Empire's applications were subsequently approved by Canadian authorities, and Empire continues to serve both markets.

6/ 14 CFR 302.1701 et seq. Under Rule 29(b), the Department may in its discretion omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision, after provision of an opportunity for interested parties to submit evidence and to support or object to grant of authority under section 402 of the Act.

All of the authority we confer here is provided for in the August 21, 1984, Exchange of Diplomatic Notes governing regional, local and commuter services. ^{7/} This consideration provides a strong basis for finding that a grant of the authority sought by each applicant is consistent with the public interest. Moreover, no other factors warrant a different conclusion. The understanding reflected in the exchange, as noted above, effectively deals with the concerns that prompted the U.S. carriers to object on the basis of defective Canadian reciprocity. As to Air One's objection to the name First Air, we find the possibility of confusion to be negligible. In this connection, we agree that neither Air One nor First Air can claim an exclusive right to the word "Air," as both carriers note. Further, the words "One" and "First" are distinct--"one" is a cardinal number, and "first" is an ordinal number. Moreover, the placement of these words in each carrier's name is reversed. The combination of these factors results in two carrier names which are easily distinguishable, and clearly different. Therefore, we do not find that the public will be confused by the names Air One and First Air.

Fitness/Ownership and Control

Each carrier's fitness can be determined based on the submission of evidence in the dockets. No party has challenged the fitness of any of these applicants.

All the carriers are Canadian local service airlines which provide scheduled and/or charter air services within Canada. Except for Quebec Aviation and Torontair, the carriers have held, for several years, foreign air carrier permits, issued by the Civil Aeronautics Board, authorizing charter passenger services into the United States using large aircraft. Quebec Aviation is registered under Part 294 of the Department's rules as a Canadian charter air taxi operator to perform charter services between the two countries, using small aircraft. Torontair is also registered under Part 294 and holds a foreign air carrier permit authorizing

^{7/} Notes 300 (U.S.) and ETT-1483 (Canada) formalized the U.S.-Canada understanding achieved June 18-20, 1984, and recorded in a Memorandum of Consultation on June 21, 1984. This Exchange of Notes replaced the Exchange of Notes of 1966, on which the applicants relied. The applications were filed before the 1984 Exchange of Notes was signed.

scheduled foreign air transportation between Kingston, Ontario, Canada, and Syracuse, New York, using small aircraft. The financial statements filed by the carriers show that they are financially sound. 8/

All the carriers have on file with the Department certificates of insurance which comply with the aircraft accident liability requirements of Part 205 of the Department's rules. In addition, each carrier states that for the last three years: its insurance has not been refused or involuntarily canceled; it has not been refused debt financing; it has not defaulted on transportation commitments; it has not failed to meet current financial obligations; and it has had no safety or tariff violations. Our review of the record in this proceeding discloses no information that contradicts these statements. In addition, the carriers subscribe to the standard permit conditions regarding insurance, Annex 6 of the Chicago Convention, and have waived the liability limits of the Warsaw Convention.

Each applicant carrier has demonstrated that it is owned and controlled by Canadian citizens.

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

1. Each applicant is fit, willing and able properly to perform the foreign air transportation described in the attached permits and to conform to the provisions of the Act, and the Department's rules, regulations and requirements;
2. The public interest requires that the exercise of the privileges granted by the permits shall be subject to the terms, conditions, and limitations contained in the attached permits, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
3. Each applicant is substantially owned and effectively controlled by nationals of its homeland country;
4. Issuance of these foreign air carrier permits will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in subsection 313.4(a)(1) of the Department's Regulations; 9/ and
5. The public interest does not require oral evidentiary hearings on the applications.

8/ Two of the carriers, Air Ontario and Austin Airways filed motions to withhold their financial statements from public disclosure (see Dockets 40996, 42197 and 40848). These carriers have shown good cause not to release their financial information to the public. Also, the Canadian Government has granted U.S. carrier requests for similar confidential treatment. Therefore, we will grant the motions.

9/ Our finding is based upon the fact that each applicant's permit will not result in a near-term annual increase in fuel consumption in excess of 10 million gallons.

ACCORDINGLY,

1. We are issuing, in the form attached, a foreign air carrier permit to each applicant authorizing scheduled foreign air transportation of persons, property, and mail as follows:

Between Thunder Bay, Ontario, Canada, and Minneapolis, Minnesota, for Austin Airways Limited;

Between London, Ontario, Canada, and Cleveland, Ohio; and between Toronto, Ontario, Canada, and Hartford, Connecticut/Springfield, Massachusetts, for Air Ontario Limited;

Between Ottawa, Ontario, Canada, and Boston, Massachusetts, for Bradley Air Services Limited d/b/a First Air;

Between Quebec City, Quebec, Canada, and Boston, Massachusetts, for Quebec Aviation Limited; and

Between Toronto (Buttonville), Ontario, Canada, and White Plains, New York, and between Toronto (Buttonville), Ontario, Canada, and Syracuse, New York, for Toronto Airways Limited d/b/a Torontair;

2. We grant the motions of Air Ontario Limited and Austin Airways Limited in Docket 40996, 42197, and 40848 for permission to withhold financial information from public disclosure;

3. We grant the motions of Air Ontario Limited; Austin Airways Limited; Empire Airlines, Inc.; Mall Airways, Inc.; and Air One, Inc. in Dockets 40996, 40848, 40411, and 42121 for leave to file otherwise unauthorized documents;

4. We deny, except to the extent granted, the applications and other requests for relief in Dockets 40848, 40996, 42197, 42121, 39403, 40410, and 40411;

5. The permits shall be signed and the Department's seal affixed;

6. Unless disapproved by the President of the United States under section 801(a) of the Act, this order with the attached permits shall become effective on the 61st day after its submission to the President, 10/ or upon the date of receipt of advice from the President that he does not intend to disapprove the Department's order under that section whichever is earlier; and

10/ This order was submitted to the President on January 27, 1986.
The 61st day is March 29, 1986.

7. We shall serve this order on each applicant; Kelowna Flightcraft Air Charter Ltd. d/b/a Inter City Air; Empire Airlines, Inc.; Mall Airways, Inc.; Air One, Inc.; the Ambassador of Canada in Washington, D.C.; and the Department of State.

By:

MATTHEW V. SCOCOZZA
Assistant Secretary for Policy
and International Affairs

(SEAL)

DESCRIPTION OF APPLICATIONS AND COMMENTS

Air Ontario Limited, Docket 40996

By application filed September 17, 1982, Air Ontario Limited requests a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property, and mail between London, Ontario, Canada, and Cleveland, Ohio. The applicant also filed a motion to withhold its financial information from public disclosure. 1/

In support of its application, Air Ontario states that it is owned and controlled by Canadian citizens and that it has been licensed by its government to perform the services requested. Air Ontario further states that the authority requested is consistent with the 1966 Regional Notes. Air Ontario states that it has been successfully providing service between the two points by exemption authority since April 1982 when it replaced Air Canada which terminated 40 years of service in the market on January 9, 1982. 2/

On July 12, 1983, Air Ontario filed a request for expedited treatment of its permit application in Docket 40996. Air Ontario states that until a permit has been issued, it cannot enter into interline agreements with any U.S. carriers; that this situation prevents it from writing through tickets, negotiating joint fares, and sharing reservation systems; and that the resulting inability of Air Ontario to interline passengers with other air carriers causes substantial inconvenience and financial penalty not only to Air Ontario, but to the traveling public as well.

On July 21, 1983, Empire Airlines, Inc. and Pilgrim Aviation and Airlines, Inc. each filed an answer to Air Ontario's application. Generally, Empire and Pilgrim both argue that action on Air Ontario's request should be deferred until the Canadian authorities take favorable action on their applications before the Canadian Government for authority under the Regional Notes.

1/ We will grant this motion. See footnote 8 of this order.

2/ By Order 82-4-126, Air Ontario was granted an exemption to perform scheduled service carrying persons and property between London, Ontario, and Cleveland, Ohio, through September 30, 1982. By Order 82-12-9, this authority was renewed for one year, until September 30, 1983. On September 16, 1983, as amended on September 22, 1983, Air Ontario filed for renewal of its exemption authority in Docket 40520 and invoked the automatic extension provisions of the Administrative Procedure Act. Since this renewal application has not yet been acted upon, Air Ontario's London-Cleveland exemption remains in effect until final action on the renewal request in Docket 40520.

Air Ontario filed a reply to the answers on August 16, 1983. 3/ Briefly, Air Ontario states that both U.S. carriers fail to recognize that it is operating and seeking permanent authority for replacement of service previously conducted by Air Canada, while, on the other hand, Empire and Pilgrim are seeking authority to institute new and/or expanded services; and that it would be unfair to the travelling public and counterproductive to U.S.-Canada relations to deny Air Ontario the right to continue the London-Cleveland service.

Air Ontario Limited, Docket 42197

On May 11, 1984, as amended on June 8, 1984, Air Ontario Limited filed an application for a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property, and mail between Hartford, Connecticut/Springfield, Massachusetts, and Toronto, Ontario, Canada, using 55-seat Convair 580 aircraft. In addition, Air Ontario has filed a motion to withhold its financial information from public disclosure. 4/

In support of its application, Air Ontario states that it is owned and controlled by Canadian citizens; that it holds a Canadian license to provide the proposed service; that the Canadian authorities have issued the same authority to a U.S. carrier; and that it has been operating commercial air services in Canada since 1961. 5/ Also, Air Ontario states that its proposed service is regional in nature, and therefore is consistent with the 1966 Regional Notes; and that its services are consistent with the public interest since no direct service is provided in the market. 6/

No answers to the application have been filed.

Austin Airways Limited, Docket 40848

By application filed July 16, 1982, Austin Airways Limited requests a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property, and mail between Thunder Bay, Ontario, Canada, and Minneapolis, Minnesota. Austin Airways has also filed a motion to withhold its financial information from public disclosure. 7/

3/ The reply was accompanied by a motion to file an otherwise unauthorized document, which we will grant.

4/ We will grant this motion. See footnote 8 of this order.

5/ Air Ontario is the predecessor company to Great Lakes Airlines Limited. In 1980 Great Lakes Airlines was the surviving company of three Canadian companies that were amalgamated. Later, in 1981, the name of Great Lakes Airlines was changed to Air Ontario Limited.

6/ By Civil Aeronautics Board Order 84-10-64, October 16, 1984, Air Ontario was issued exemption authority to conduct scheduled services between Toronto and Hartford, CT/Springfield, MA. On September 12, 1985, after a short lapse, this authority was reinstated.

7/ We will grant this motion. See footnote 8 of this order.

In support of its application, Austin Airways states that the proposed services are governed by the 1966 U.S.-Canada Regional Notes; that it holds the appropriate licenses from its government to provide the desired services; and that it has been successfully conducting scheduled services over the proposed route, which are the only direct services available between Thunder Bay and the United States. 8/

On August 4, 1983, Empire Airlines, Inc. filed an answer to Austin Airways' application. In its answer, Empire discusses problems it has been encountering with the Canadian Government in seeking approval of services under the Regional Notes and requests that no further favorable action be taken on Austin's request until the Canadian authorities act favorably on Empire's pending Syracuse-Montreal/Toronto/Ottawa applications.

On August 31, 1983, Austin Airways filed a reply to Empire's objection. 9/ Generally, Austin states that it would be unfair to the travelling public and counterproductive to improving U.S.-Canada relations to deny Austin the right to continue scheduled services in the Thunder Bay-Minneapolis market pursuant to a section 402 permit.

Bradley Air Services Limited d/b/a First Air, Docket 42121

On April 12, 1984, Bradley Air Services Limited d/b/a First Air filed an application for a foreign air carrier permit authorizing it to provide scheduled foreign air transportation of persons, property, and mail between Ottawa, Ontario, Canada, and Boston, Massachusetts. Also, First Air requests permission under Part 215 to use the trade name First Air. 10/ First Air plans to conduct twelve nonstop round-trip flights per week over the route, using HS-748 aircraft in a 44-seat configuration.

8/ Austin Airways has been providing scheduled services between Thunder Bay and Minneapolis for some time in accordance with its exemption authority. Initially the exemption authority was issued to Superior Airways. After the amalgamation of Austin and Superior, we transferred Superior's exemption authority to Austin. (See Orders 81-7-157, 82-4-143, and 82-10-75.)

9/ Austin's reply was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

10/ We will dismiss this request as moot. No additional authority is needed for Bradley Air Services Limited d/b/a First Air to do business under a name that is readily identifiable with the name in which its operating authorization is issued. (See section 215.2 of the Department's rules.)

In support of its application, First Air states that it is a Canadian corporation owned and controlled by Canadian citizens; that it has been operating commercial air services in Canada since 1946; that it conducts charter passenger services into the United States under its foreign air carrier permit; and that it is fit, willing, and able properly to perform the requested air transportation and to conform to the provisions of the Act and the rules, regulations, and requirements of the Department. In addition, First Air states that the Canadian authorities have licensed both First Air and Pilgrim Airlines to provide scheduled service between Ottawa and Boston, which shows that reciprocity exists; that there is a public need for the service since no airline provides nonstop scheduled services over the route and passengers and cargo must therefore make time consuming, expensive and circuitous connections; and that First Air's services would make possible same-day roundtrip business travel between two major metropolitan areas. 11/

On May 10, 1984, Air One, Inc., filed an answer to First Air's application. 12/ Air One states that it does not object to the route authority, per se, but objects to the carrier's use of the name "First Air." Air One believes that the close connection between "One" and "First" would unduly confuse the travelling public, travel agents, and other members of the trade; that it has spent significant amounts of money to purchase exclusive rights to the name Air One and to advertise in newspapers, radio and television the company name, and its unique services; and that the similarity of names would significantly damage Air One's national reputation and undermine its ability to develop and market its product at Boston and other national markets.

First Air did not file a reply to Air One's answer in this proceeding. 13/

11/ By Civil Aeronautics Board Order 84-10-64, First Air was issued exemption authority to provide scheduled services between Ottawa and Boston. On August 16, 1985, First Air filed for renewal of its exemption authority and invoked the automatic extension provisions of the Administrative Procedure Act. Therefore, First Air's exemption authority remains in effect until we take final action on this renewal application in Docket 42120.

12/ Air One's answer was accompanied by a motion to file an otherwise unauthorized document. We will grant the motion.

13/ First Air did reply to Air One's answer that was filed in the exemption proceeding. See Docket 41220 and Civil Aeronautics Board Order 84-10-64.

Quebec Aviation Limited, Docket 39403

By application filed March 10, 1981, Quebec Aviation Limited requests a foreign air carrier permit to engage in foreign air transportation of persons, property, and mail between Quebec City, Quebec, Canada, and Boston, Massachusetts. 14/

In support of its application, Quebec Aviation states that the authority sought is provided for under the 1966 "Regional Notes" between the United States and Canada; that it is owned and controlled by Canadian citizens; and that no other carrier provides service over the proposed route. 15/

No answers to the application have been filed.

Toronto Airways Limited d/b/a Torontair, Docket 40410

By application filed January 22, 1982, Toronto Airways Limited d/b/a Torontair requests a foreign air carrier permit authorizing it to provide scheduled foreign air transportation of persons and property between Toronto (Buttonville), Ontario, Canada, and White Plains, New York, using small aircraft. 16/

In support of its application, Torontair refers to information in Docket 36932 to show that it is owned and controlled by Canadian citizens; that it is fit to provide the proposed service in a safe and reasonable manner; and that its maintenance program and crew requirements comply with the requirements specified by the Canadian aviation authorities. Also,

14/ Quebec Aviation originally sought a permit to conduct scheduled service between Sherbrooke, Quebec-Boston; between Quebec City, Quebec-Portland, Maine; and between Quebec City-Boston. By letter dated October 25, 1984, the carrier advised that its Canadian license had been amended authorizing services only between Quebec City-Boston. Therefore, Quebec Aviation stated that it seeks a permit for the route Quebec City-Boston, and that it withdraws its request for the other two routes.

15/ Quebec Aviation currently provides scheduled services between Quebec City and Boston, using Beechcraft aircraft, in accordance with its exemption authority (see Orders 81-7-131, 82-9-73, and 84-8-65).

16/ By Civil Aeronautics Board Order 83-1-80, Torontair was granted a one-year exemption to perform these scheduled services, until January 23, 1984. On November 18, 1983, Torontair filed for renewal of its exemption authority and invoked the automatic extension provisions of the Administrative Procedure Act. Therefore, Torontair's exemption authority remains in effect until we take final action on this exemption renewal application (see Docket 41094).

Torontair states that it holds the appropriate Canadian licenses to provide the proposed scheduled service; that many corporations with major offices in the Toronto and White Plains areas have shown a need for direct, nonstop service; and that its request is within the spirit of the 1966 Regional Notes between the United States and Canada.

No answers to the application have been filed.

Toronto Airways Limited d/b/a Torontair, Docket 40411

By application filed January 22, 1982, Toronto Airways Limited d/b/a Torontair requests a foreign air carrier permit so as to engage in scheduled foreign air transportation of persons and property between Toronto (Buttonville), Ontario, Canada, and Syracuse, New York, using small aircraft. 17/

In support of its application, Torontair refers to information in Docket 36932 to show that it is owned and controlled by Canadian citizens; that it is fit to provide the proposed service in a safe and reasonable manner; and that its maintenance program and crew requirements comply with the requirements specified by the Canadian aviation authorities. Torontair states that several businesses have indicated a need for direct service in the proposed market; that tourist travel should benefit from direct services as well; and that the proposed operation is within the spirit of the 1966 Regional Notes.

On June 28, 1982, Mall Airways, Inc. filed an answer to Torontair's application. 18/ Mall states that the Canadian authorities have denied its application for Syracuse-Toronto authority on the basis that Torontair holds a Canadian license to provide scheduled services in the market, and that this market is not large enough to support service by two carriers. Mall believes that the Canadian Government's action violates the spirit of the Regional Notes and asks that we not grant Torontair's application until the Canadian Transport Commission reverses its decision, and allows it to operate service between Syracuse and Toronto. (Mall subsequently obtained Canadian authority and started serving Toronto-Syracuse.)

17/ By Civil Aeronautics Board Order 83-6-18, Torontair was granted a one-year exemption to perform these scheduled services, until May 13, 1984. On March 12, 1984, Torontair filed for renewal of its exemption authority and invoked the automatic extension provisions of the Administrative Procedure Act. Since this renewal application has not yet been acted upon, Torontair's exemption authority remains in effect until final action on the exemption renewal application (see Docket 41396).

18/ Mall's answer was accompanied by a motion for leave to file an otherwise unauthorized document, which we will grant.

SUMMARY OF APPLICATIONS

Applicant: Austin Airways Limited

Docket No: 40848

Federal Register Cite: 47 FR 31909, July 23, 1982

Charter Permit Issued By Order 77-3-46, effective March 5, 1977

Authority Covered By: U.S.-Canada Exchange of Notes, dated August 21, 1984.

Holds Government License For Authority Sought: Exhibit No. 3

Operating History: Conducted commercial air services for 50 years; serves 50 communities on scheduled basis throughout Ontario, Quebec, and NW Territories; and provides charter services within Canada and between the U.S. and Canada.

Fleet: 8 single and multi-engine Cessna; 2 DHC-3 Otter; 8 HS-748; 3 DC-3; and 11 DHC-6.

Aircraft Maintenance Performed By: Austin Airways at Thunder Bay, Ontario

Financial Indicators: At applicant's request this information is withheld from public disclosure. Our review of its financial statements for CY 1980 and 1981 demonstrate that it is in sound financial condition, and show that it earned a profit in each of those years.

* * * * *

Applicant: Air Ontario Limited

Docket Nos. 40996 and 42197

Federal Register Cite: 47 FR 42130, September 24, 1982, and 49 FR 21556, May 22, 1984

Charter Permit Issued By Order 82-4-37, effective April 23, 1982

Authority Covered By: U.S.-Canada Exchange of Notes, dated August 21, 1984.

Holds Government License For Authority Sought: Exhibit 3, Docket 40996; and Exhibit 3 and correspondence section of Docket 42197.

Operating History: Domestic Canada serve since 1961 as Great Lakes Airlines Limited. Name changed to Air Ontario Limited, April 1982 (Order 82-4-37). Initial permit issued May 20, 1965, Order E-22201.

Aircraft Owned: 5 Convair 580 turbo-props

SUMMARY OF APPLICATIONS

Aircraft Maintenance Performed By: Air Ontario provides the majority of its aircraft maintenance, with the exception of engine and airframe overhauls, at its Sarnia, Ontario facility.

Financial Indicators: At applicant's request this information is withheld from public disclosure. Our review of its financial statements for the year ended 9-30-83 and for nine months ended 9-30-82 demonstrate that Air Ontario is in sound financial condition and show that it earned a profit in 1983.

* * * * *

Applicant: Bradley Air Services Limited d/b/a First Air

Docket No. 42121

Federal Register Cite: 49 FR 17058, April 23, 1984

Charter Permit Issued By: Order 80-9-48, effective September 11, 1980

Authority Covered By: U.S.-Canada Exchange of Notes, dated August 21, 1984.

Holds Government License For Authority Sought: Exhibit No. 5

Operating History: First Air has conducted charter operations within Canada for more than 30 years, and has provided scheduled services within Canada for 10 years.

Aircraft Owned: 3 HS-748, 4 DC-3, 3 DHC-6, and 1 D18S

Aircraft Leased: 5 DHC-6, 1 DHC-2, and 1 C-500

Aircraft Maintenance Performed By: First Air performs own maintenance in its facility located at Carp, Ontario.

Financial Indicators For Years Ending:	<u>Dec. 31, 1983</u>	<u>Dec. 31, 1982</u>
	(000)	(000)
Total Assets	\$ 12,182	\$ 13,126
Total Liabilities	9,673	10,974
Owners' Equity	2,509	2,153
Net Profit (Loss)	431	151

* * * * *

SUMMARY OF APPLICATIONS

Applicant: Quebec Aviation Ltd.

Docket No. 39403

Federal Register Cite: 46 FR 17817, March 20, 1981

Registered Under Part 294: Yes, Registration No. 80, dated October 22, 1982.

Authority Covered By: U.S.-Canada Exchange of Notes, dated August 21, 1984.

Holds Government License For Authority Sought: Yes. See correspondence section, letter dated October 25, 1984.

Operating History: Quebec Aviation was founded in 1961. Currently serves points throughout the Provinces of Quebec and Ontario and the Maritimes. In addition to providing domestic and international charter services, the carrier offers specialty flight services.

Aircraft Owned (O) And Leased (L): 16 Cessna--14(O) 2(L), and 9 Piper--6(O) 3(L)

Aircraft Maintenance Performed By: Quebec Aviation performs its own maintenance at its base of operations in Quebec City, Quebec.

Financial Indicators For Years Ending:	<u>Dec. 31, 1980</u> (000)	<u>Dec. 31, 1979</u> (000)
Total Assets	\$ 1,740	\$ 1,939
Total Liabilities	1,104	1,437
Owners' Equity	636	502
Operating Profit (Loss)	134	20

* * * * *

SUMMARY OF APPLICATIONS

Applicant: Toronto Airways Limited d/b/a Torontair

Docket Nos. 40410 and 40411

Incorporates By Reference Information And Exhibits Contained In: Docket
36932

Federal Register Cite: 47 FR 4544, January 22, 1982

Scheduled Permit Issued By: Order 80-7-96, effective July 16, 1980

Authority Covered By: U.S.-Canada Exchange of Notes, dated August 21,
1984.

Holds Government License For Authority Sought: Exhibit B of each docket.

Operating History: Torontair has provided charter passenger services in
the Southern Ontario region for more than 20 years and has provided
occasional U.S.-Canada charter services.

Aircraft Owned: 6 Piper, 1 Cessna, and 1 Mitsubishi

Aircraft Maintenance Performed By: Torontair performs its own maintenance
at its home base in Toronto-Buttonville Airport.

Financial Indicators For Years Ending:	<u>Dec. 31, 1980</u> (000)	<u>Dec. 31, 1979</u> (000)
Total Assets	\$11,116	\$10,974
Total Liabilities	1,701	993
Owners' Equity	9,414	9,981
Operating Profit (Loss)	384	(186)

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

PERMIT TO FOREIGN AIR CARRIER

AUSTIN AIRWAYS LTD.

is authorized, subject to the following provisions, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of persons, property, and mail, as follows:

Between Thunder Bay, Ontario, Canada and Minneapolis,
Minnesota.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached, and to the following:

1. The holder shall not use any aircraft or conduct any operations except in accordance with the authority and conditions contained in its applicable Canadian licenses.
2. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective, to which the United States and Canada shall be parties.

This permit shall be effective on _____ . 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 which it was issued, or (2) upon the termination or expiration of the United States-Canada Exchange of

Notes on Regional, Local, and Commuter Services (Note Nos. ETT-1483 and 300), effective August 21, 1984. However, clause (2) shall not apply if, prior to the occurrence of the event specified in clause (2), the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States and the Government of Canada are or shall become parties.

The Department of Transportation has executed this permit and affixed its seal on January 27, 1986 .

MATTHEW V. SCOCOZZA
Assistant Secretary for Policy
and International Affairs

(SEAL)

PERMIT TO FOREIGN AIR CARRIER

Docket 40848

The holder's authority to conduct operations under the permit to which this is attached shall also be subject to the following terms, conditions, and limitations:

- (1) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (2) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements for minimum insurance coverage contained in 14 CFR 205;
- (3) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit;
- (4) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) The holder shall conform to the airworthiness and airman competency requirements prescribed by its home Government for international air service;
- (6) Except as specifically authorized by the Department of Transportation, all flights to/from the United States must originate or terminate in the holder's homeland;
- (7) The holder shall not provide the foreign air transportation authorized by this permit unless it holds a currently effective authorization from its Government for such operations and such document is on file with the Department of Transportation;
- (8) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation; and shall be subject to compliance with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (9) This permit cannot be sold or otherwise transferred without explicit Department approval under section 402(g) of the Federal Aviation Act of 1958, as amended.

* * * *

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

PERMIT TO FOREIGN AIR CARRIER

AIR ONTARIO LTD.

is authorized, subject to the following provisions, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of persons, property, and mail, as follows:

1. Between London, Ontario, Canada and Cleveland, Ohio.
2. Between Toronto, Ontario, Canada and Hartford, Connecticut/Springfield, Massachusetts.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached, and to the following:

1. The holder shall not use any aircraft or conduct any operations except in accordance with the authority and conditions contained in its applicable Canadian licenses.
2. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective, to which the United States and Canada shall be parties.

This permit shall be effective on _____ . 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 which it was issued, or (2) upon the termination or expiration of the United States-Canada Exchange of

Notes on Regional, Local, and Commuter Services (Note Nos. ETT-1483 and 300), effective August 21, 1984. However, clause (2) shall not apply if, prior to the occurrence of the event specified in clause (2), the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States and the Government of Canada are or shall become parties.

The Department of Transportation has executed this permit and affixed its seal on January 27, 1986 .

MATTHEW V. SCOCOZZA
Assistant Secretary for Policy
and International Affairs

(SEAL)

PERMIT TO FOREIGN AIR CARRIER

Dockets 40996
42197

The holder's authority to conduct operations under the permit to which this is attached shall also be subject to the following terms, conditions, and limitations:

- (1) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (2) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements for minimum insurance coverage contained in 14 CFR 205;
- (3) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit;
- (4) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) The holder shall conform to the airworthiness and airman competency requirements prescribed by its home Government for international air service;
- (6) Except as specifically authorized by the Department of Transportation, all flights to/from the United States must originate or terminate in the holder's homeland;
- (7) The holder shall not provide the foreign air transportation authorized by this permit unless it holds a currently effective authorization from its Government for such operations and such document is on file with the Department of Transportation;
- (8) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation; and shall be subject to compliance with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (9) This permit cannot be sold or otherwise transferred without explicit Department approval under section 402(g) of the Federal Aviation Act of 1958, as amended.

* * * *

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

PERMIT TO FOREIGN AIR CARRIER

BRADLEY AIR SERVICES LIMITED
d/b/a FIRST AIR

is authorized, subject to the following provisions, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of persons, property, and mail, as follows:

Between Ottawa, Ontario, Canada and Boston, Massachusetts.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached, and to the following:

1. The holder shall not use any aircraft or conduct any operations except in accordance with the authority and conditions contained in its applicable Canadian licenses.
2. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective, to which the United States and Canada shall be parties.

This permit shall be effective on _____ . 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 which it was issued, or (2) upon the termination or expiration of the United States-Canada Exchange of

Notes on Regional, Local, and Commuter Services (Note Nos. ETT-1483 and 300), effective August 21, 1984. However, clause (2) shall not apply if, prior to the occurrence of the event specified in clause (2), the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States and the Government of Canada are or shall become parties.

The Department of Transportation has executed this permit and affixed its seal on January 27, 1986 .

MATTHEW V. SCOCOZZA
Assistant Secretary for Policy
and International Affairs

(SEAL)

PERMIT TO FOREIGN AIR CARRIER

Docket 42121

The holder's authority to conduct operations under the permit to which this is attached shall also be subject to the following terms, conditions, and limitations:

- (1) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (2) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements for minimum insurance coverage contained in 14 CFR 205;
- (3) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit;
- (4) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) The holder shall conform to the airworthiness and airman competency requirements prescribed by its home Government for international air service;
- (6) Except as specifically authorized by the Department of Transportation, all flights to/from the United States must originate or terminate in the holder's homeland;
- (7) The holder shall not provide the foreign air transportation authorized by this permit unless it holds a currently effective authorization from its Government for such operations and such document is on file with the Department of Transportation;
- (8) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation; and shall be subject to compliance with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (9) This permit cannot be sold or otherwise transferred without explicit Department approval under section 402(g) of the Federal Aviation Act of 1958, as amended.

* * * *

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

PERMIT TO FOREIGN AIR CARRIER

QUEBEC AVIATION LIMITED

is authorized, subject to the following provisions, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of persons, property, and mail, as follows:

Between Quebec City, Quebec, Canada and Boston,
Massachusetts.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached, and to the following:

1. The holder shall not use any aircraft or conduct any operations except in accordance with the authority and conditions contained in its applicable Canadian licenses.
2. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective, to which the United States and Canada shall be parties.

This permit shall be effective on _____ . 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 which it was issued, or (2) upon the termination or expiration of the United States-Canada Exchange of

Notes on Regional, Local, and Commuter Services (Note Nos. ETT-1483 and 300), effective August 21, 1984. However, clause (2) shall not apply if, prior to the occurrence of the event specified in clause (2), the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States and the Government of Canada are or shall become parties.

The Department of Transportation has executed this permit and affixed its seal on January 27, 1986.

MATTHEW V. SCOCOZZA
Assistant Secretary for Policy
and International Affairs

(SEAL)

PERMIT TO FOREIGN AIR CARRIER

Docket 39403

The holder's authority to conduct operations under the permit to which this is attached shall also be subject to the following terms, conditions, and limitations:

- (1) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (2) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements for minimum insurance coverage contained in 14 CFR 205;
- (3) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit;
- (4) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) The holder shall conform to the airworthiness and airman competency requirements prescribed by its home Government for international air service;
- (6) Except as specifically authorized by the Department of Transportation, all flights to/from the United States must originate or terminate in the holder's homeland;
- (7) The holder shall not provide the foreign air transportation authorized by this permit unless it holds a currently effective authorization from its Government for such operations and such document is on file with the Department of Transportation;
- (8) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation; and shall be subject to compliance with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (9) This permit cannot be sold or otherwise transferred without explicit Department approval under section 402(g) of the Federal Aviation Act of 1958, as amended.

* * * *

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

PERMIT TO FOREIGN AIR CARRIER

TORONTO AIRWAYS LIMITED
d/b/a TORONTAIR

is authorized, subject to the following provisions, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of persons, property, and mail, as follows:

1. Between Toronto (Buttonville), Ontario, Canada and White Plains, New York.
2. Between Toronto (Buttonville), Ontario, Canada and Syracuse, New York.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached, and to the following:

1. The holder shall not use any aircraft or conduct any operations except in accordance with the authority and conditions contained in its applicable Canadian licenses.
2. This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective, to which the United States and Canada shall be parties.

This permit shall be effective on _____ . 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 which it was issued, or (2) upon the termination or expiration of the United States-Canada Exchange of

Notes on Regional, Local, and Commuter Services (Note Nos. ETT-1483 and 300), effective August 21, 1984. However, clause (2) shall not apply if, prior to the occurrence of the event specified in clause (2), the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States and the Government of Canada are or shall become parties.

The Department of Transportation has executed this permit and affixed its seal on January 27, 1986 .

MATTHEW V. SCOCOZZA
Assistant Secretary for Policy
and International Affairs

(SEAL)

FOR OFFICIAL USE ONLY

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

Issued by the Department of Transportation
on the 6th day of February, 1986

Application of :
NIPPON CARGO AIRLINES COMPANY, LTD. : Docket 42023
for a foreign air carrier permit pursuant:
to section 402 of the Federal Aviation :
Act of 1958, as amended :

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

On February 29, 1984, Nippon Cargo Airlines Company, Ltd. (NCA) filed with the Civil Aeronautics Board an application for an initial foreign air carrier permit ^{1/} to engage in scheduled all-cargo services commencing April 1, 1985, (1) between a point or points in Japan and the coterminal points San Francisco and New York, and (2) between a point or points in Japan and the terminal point New York, New York, via the intermediate point Anchorage, Alaska. ^{2/} NCA further requested authority to perform cargo charters in accordance with 14 CFR Part 212.

In support of its application, NCA stated that it has been licensed by its government to perform the all-cargo services at issue here, and, by Diplomatic Note dated November 16, 1983, was designated by the Government of Japan in accordance with Article 4(A)(1) of the United States-Japan Air Transport Services Agreement, as amended. ^{3/}

^{1/} NCA's application was summarized in the Federal Register, 49 FR 9244, March 12, 1984.

^{2/} On April 9, 1984, NCA amended its application, defining its request for Anchorage intermediate authority as a technical stop.

^{3/} TIAS 2854, 4158, 5939, 6787, 7333 and 8882.

FOR OFFICIAL USE ONLY

ANSWERS

During March, 1984, Federal Express Corporation, The Flying Tiger Line Inc., and Transamerica Airlines, Inc., filed answers in response to NCA's permit application. The carriers urged deferral of NCA's application pending resolution of various aviation issues with Japan. Federal Express and Flying Tiger also expressed concerns about possible anticompetitive consequences of NCA's ownership.

Specifically, Federal Express argued that action on NCA's application should be deferred pending the concurrent grant of all-cargo authority to Federal Express or until an indication of willingness by the Government of Japan to grant such authority to Federal Express.

Flying Tiger listed (1) Japanese domination of the air freight market, and the likelihood that NCA's entry would increase Japan's market share, and, (2) the fact that NCA's application cannot be considered independent of Japan Air Lines' request for expanded cargo rights into and beyond the U.S.

Transamerica stated that it had no objection to NCA's application provided the U.S. reached a satisfactory understanding with Japan regarding additional U.S. carrier designations under the bilateral agreement. Transamerica also noted that while NCA sought scheduled as well as charter authority, its Japanese license only provides for the operation of scheduled services.

On May 14, 1984, NCA filed a reply to the answers of Federal Express, Flying Tiger and Transamerica.^{4/}

On June 28, 1984, NCA filed a motion for expeditious treatment of its pending application and was answered by Flying Tiger. On July 18, 1984, NCA responded.^{5/}

RESULTS OF U.S.-JAPAN NEGOTIATIONS

On May 1, 1985, the United States and Japan signed an interim agreement, embodied in a Memorandum of Understanding, which, among other things, provides for NCA to commence its all-cargo services and to continue them

^{4/} NCA's reply was accompanied by a motion for leave to file an otherwise unauthorized document.

^{5/} We will grant all motions to file otherwise unauthorized documents.

until the conclusion of comprehensive revision talks. 6/

On April 30, 1985, we orally granted NCA an exemption, sua sponte, from section 402 of the Act to perform those services provided for in the MOU, until September 6, 1985, or the conclusion of the comprehensive revision talks, whichever was later. This authority was and is subject to our standard conditions applicable to exemption authority, and to NCA's adherence to the terms of the MOU. That exemption authority remains in effect, and NCA is currently conducting operations under that authority.

DECISION

We have decided to issue NCA a foreign air carrier permit authorizing it to perform all-cargo services between Tokyo, Japan, and San Francisco/New York. We have thoroughly reviewed the record and have decided to grant the application using the simplified Subpart Q procedures.^{7/} The public was informed of the carrier's application by notices in the Federal Register and the CAB's weekly list of applications filed, describing the authority sought and giving interested persons an opportunity to submit evidence and objections to the award of the authority. These notices provided the required notice and filing opportunities. Simplified procedures are appropriate in this case, because there are no material issues of fact which require other procedures.

We are granting NCA the authority it seeks to the extent that it is encompassed by the April 30, 1985, MOU and subject to the conditions and limitations contained in that agreement.

6/ The MOU provides for NCA to operate six (6) wide-body roundtrip all-cargo flights per week on a route between Tokyo and San Francisco/New York as of May 1, 1985. The MOU provides that NCA may increase its frequencies from April 1, 1986, by a percentage equal to the percentage increase in the total air cargo traffic between Japan and the United States for the period January 1, 1985, to December 31, 1985, over the total air cargo traffic for the period January 1, 1984, to December 31, 1984, and similarly for each succeeding year. The MOU also provides that any increased frequencies that become available and are not used may be reserved for later use. The MOU also specified additional rights that would be available to U.S. carriers.

7/ 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

In reaching our decision, as more fully discussed below, we find that, based on the record, NCA is substantially owned and effectively controlled by nationals of Japan, and that it is fit, willing and able to conduct the authorized services and adhere to the provisions of the Act, and our rules, regulations, and requirements.

PUBLIC INTEREST CONSIDERATIONS

The permit authority granted by this order is provided for in the May 1, 1985, Memorandum of Understanding between the United States and Japan. ^{8/} On August 13, 1983, NCA was issued a license by the Japanese Ministry of Transport (NCA Exhibit 402, Docket 42023) to perform scheduled "all freight service" over the routing Tokyo-San Francisco-New York. In November 1983, NCA was designated by the Government of Japan under Article 4(A)(1) of the United States-Japan Air Transport Services Agreement to serve Japanese routes 1 and 3 of the Route Schedule appended to the Agreement.

We find that the view of the U.S. carrier respondents that we should defer action on NCA's request until resolution of pending U.S.-Japan aviation issues has been effectively dealt with by the signing of the May 1, 1985 interim agreement, which specifically provides for this authority to be granted to an airline of Japan. ^{9/}

We have also considered arguments concerning the possible anticompetitive consequences of NCA's ownership. Although we do not believe that this factor warrants withholding permit authority, we intend to monitor the situation. We also note that the Department of Justice has been fully apprised of the situation and has filed no objections to the issuance of the permit.

NCA'S OWNERSHIP AND CONTROL

NCA was formed on September 21, 1978, by four Japanese shipping companies ^{10/} and All Nippon Airways, a domestic Japanese scheduled

^{8/} The authority granted is subject to the limitations of the MOU. Thus, NCA is limited to six flights per week and any request to operate extra sections would require additional authority.

^{9/} The MOU also provides for additional passenger and cargo rights for U.S. carriers. The Department has instituted a case to determine which U.S. carriers should exercise those rights. See Order 85-11-29, November 13, 1985, instituting the U.S.-Japan Gateways Case, Docket 43575.

^{10/} The Japanese shipping companies are Kawasaki Kisen Kaisha, Ltd. ("K" Line); Nippon Yusen Kaisha (NYK Line); Mitsui O.S.K. Lines; and Yamashita-Shinnihon Steamship Co., Ltd. (Y.S. Line). Japan Line, Ltd. (Japan Line) and Showa Line, Ltd. subsequently became stockholders.

carrier. Subsequent stock transactions diversified NCA's ownership. As of April 1, 1984, the company had 6,400,000 shares of stock issued and outstanding, 100% owned by Japanese citizens.11/

OPERATIONAL FITNESS

We find that NCA is operationally fit to conduct the operations at issue here. Biographical data supplied by the applicant demonstrate that all of NCA's officers, directors and key management personnel have considerable transportation experience. NCA management personnel have been drawn from companies with extensive experience in shipping, air freight forwarding, rail and air carrier operations. NCA stated that it would inaugurate its proposed services with dry-leased All Nippon Airways' B-747-200 aircraft to be used exclusively by NCA. Maintenance of NCA's aircraft will be performed in accordance with ICAO standards by All Nippon Airways at Tokyo. Transit checks on the aircraft will be performed under contract supervised by NCA maintenance representatives. NCA stated that it had not been involved in any safety or tariff violations during the five years preceding the filing of the permit application.12/

11/ NCA's stock is issued as follows: "K" Line (10%), NYK Line (10%), Mitsui O.S.K. Lines (10%), Y.S. Line (10%), All Nippon Airways (10%), Japan Line (5%), Showa Line (5%), 23 Japanese Banks (15.47%), 16 Japanese insurance companies (11.09%), and 34 other Japanese citizen companies (13.44%). See Exhibit NCA-103, Docket 42023.

12/ By letter dated March 13, 1984, the CAB requested that the FAA provide a safety and compliance evaluation of NCA. By letter dated March 22, 1984, the FAA's Office of Flight Operations stated that although NCA held no operating authority, it knew of no reason why the CAB should act unfavorably on NCA's pending permit application, so long as it made any authority granted to NCA subject to the customary conditions. A copy of the CAB's letter and the FAA's response have been placed in Docket 42023. On July 18, 1985, the FAA advised the Department that on May 1, 1985, NCA had been issued FAR Part 129 Operations Specifications and it knew of no reason why we should act unfavorably on NCA's application.

FINANCIAL FITNESS

We find that NCA is fit to conduct the operations we are authorizing without exposing the public to undue financial risk. The applicant stated that because its proposed operations were not to commence until 1985 it was unable to provide historical financial statements based on operations. NCA did, however, provide forecast balance sheets for April 1, 1984 and 1985, which are summarized in Appendix A to this order. In addition, NCA provided current balance sheets and profit and loss statements for the seven original NCA stockholders.^{13/} NCA further stated that it does not receive, or expect to receive, financial assistance from the Government of Japan. The applicant stated that it had been able to meet its financial obligations, had never defaulted on transportation commitments, and had never been refused debt financing.^{14/}

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

1. Nippon Cargo Airlines Company, Ltd. is qualified and has been designated by its government to perform the air services described in the attached permit;
2. Nippon Cargo Airlines Company, Ltd. 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. Nippon Cargo Airlines Company, Ltd. is substantially owned and effectively controlled by nationals of Japan;
5. 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 section 313.4(a)(1) of our Regulations;^{15/}
6. The public interest does not require an oral evidentiary hearing on the application; and
7. Except to the extent granted, the application of Nippon Cargo Airlines Company, Ltd. in Docket 42023 should be denied.

^{13/} See Exhibit NCA-300, pages 1-27, Docket 42023.

^{14/} On May 6, 1985, NCA filed the requisite Certificate of Insurance which satisfies the requirements of 14 CFR Part 205.

^{15/} 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 Nippon Cargo Airlines Company, Ltd. a foreign air carrier permit, in the form attached, authorizing it to perform all-cargo services between the terminal point Tokyo, Japan, and the coterminal points San Francisco, California, and New York, New York;
2. Nippon Cargo Airlines Company, Ltd. may operate a maximum of six wide-body roundtrip all-cargo flights per week as of May 1, 1985, and shall be permitted, by subsequent Department order, to increase its frequencies beginning April 1, 1986, by a percentage equal to the percentage increase in the total air cargo traffic between Japan and the United States for the period January 1, 1985, to December 31, 1985, over the total air cargo traffic for the period January 1, 1984, to December 31, 1984, under procedures set forth in the April 30, 1985 MOU, and similarly for each succeeding year (available increased frequencies not used may be reserved for later use);
3. Flights exceeding the number described above are not authorized;
4. The exercise of the privileges granted above are subject to Nippon Cargo Airlines' compliance with the conditions listed in the permit and the Attachment to the permit, and the terms of the April 30, 1985 MOU; and
5. We will grant all motions in Docket 42023 to file otherwise unauthorized documents.
6. Unless disapproved by the President of the United States under section 801(a) of the Act, this order and the permit attached shall become effective on the 61st day after its submission to the President,^{16/} or upon the date of receipt of advice from the President that he does not intend to disapprove the Department's order under that section, whichever is earlier; and
7. We will serve a copy of this order on all persons that have filed pleadings in Docket 42023, the Ambassador of Japan in the United States, the Secretary of State and the Federal Aviation Administration (San Francisco-FSDO #3 and AFS-220).

By:

MATTHEW V. SCOCOZZA
Assistant Secretary for Policy
and International Affairs

(SEAL)

^{16/} This order was submitted to the President on February 6, 1986. The 61st day is April 10, 1986.

SUMMARY OF APPLICATION
NIPPON CARGO AIRLINES
Docket 42023

Homeland Country: Japan

Authority Covered By Bilateral Agreement: Yes--United States-Japan Air Transport Services Agreement, as amended, and the April 30, 1985, Memorandum of Understanding.

Designated By Its Government: Yes--Exhibit 401, Docket 42023

Holds Government License For Authority Sought: Exhibit 402 - Docket 42023

Operating History: None--new applicant

Aircraft Owned (O) And Leased (L): 2 B-747-200F dry-leased from All Nippon Airways - Aircraft will be used exclusively by NCA.

Aircraft Maintenance Performed By: All Nippon Airways in accordance with ICAO standards.

Financial Indicators (Last 2 years):	April 1, 1985 (forecast) <hr/> (millions)	April 1, 1984 (forecast) <hr/> (millions)
Total Assets	\$ 16.0	\$ 10.0
Total Liabilities	-	\$ 7.0
Owners' Equity	\$ 16.0	\$ 3.0
Operating Profit (Loss)	(No historical financial data based on operations)	

Majority Ownership By Nationals Of: Japan

Effective Control By Nationals Of: Japan

Insurance Coverage: Yes--meets minimum requirements of 14 CFR 205

Insurance Refused Or Involuntarily Canceled During Last 3 Years: No

Refused Debt Financing Last 3 Years: No

Defaulted On Transportation Commitments Last 3 Years: No historical data available

Failed To Meet Current Financial Obligations Last 3 Years: No historical data available

Safety Violations During Last 5 Years: No historical data available

Tariff Violations During Last 5 Years: No historical data available

Subscribes To Standard Permit Conditions Regarding Insurance, to Annex 6 Of the Chicago Convention, and to C.A.B. Agreement 18900: Yes

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

PERMIT TO FOREIGN AIR CARRIER

NIPPON CARGO AIRLINES COMPANY, LTD.

is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958, as amended, and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation with respect to property, as follows:

Between the terminal point Tokyo, Japan, and the coterminal points San Francisco, California, and New York, New York.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations attached, and to those contained in Order

This permit shall be subject 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 Japan shall be parties.

This permit shall be effective on . 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 which issued; or (2) upon the effective date of any treaty, convention, agreement or amendment, which shall have the effect of eliminating the route or routes authorized by this permit from the routes which may be operated by airlines designated by the Government of Japan (or in the event of the elimination of any part of the authorized route or routes, the authority granted shall terminate to the extent of such elimination), or (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of Japan in lieu of the holder, or (4) upon the termination or expiration of either the Air Transport Services Agreement between the Government of the United States of America and the Government of Japan effective September 15, 1953, as amended, or of the Memorandum of Understanding ratified May 1, 1985: However, clause (4) of this paragraph shall not apply if, prior to occurrence of the event specified in clause (4), the operation of the foreign air transportation authorized becomes the subject of any treaty, convention, or agreement to which the United States and Japan are or shall become parties.

The Department of Transportation has executed this permit and affixed its seal February 6, 1986.

MATTHEW V. SCOCOZZA
Assistant Secretary for Policy
and International Affairs

(SEAL)

PERMIT TO FOREIGN AIR CARRIER

Docket 42023

The holder's authority to conduct operations under the permit to which this is attached shall also be subject to the following terms, conditions, and limitations:

- (1) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (2) The privileges granted by this permit are subject to the condition that the foreign air carrier complies with the requirements for minimum insurance coverage contained in 14 CFR 205;
- (3) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit;
- (4) The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) The holder shall conform to the airworthiness and airman competency requirements prescribed by its home Government for international air service;
- (6) Except as specifically authorized by the Department of Transportation, all flights to/from the United States must originate or terminate in the holder's homeland;
- (7) The holder shall not provide the foreign air transportation authorized by this permit unless it holds a currently effective authorization from its Government for such operations and such document is on file with the Department of Transportation;
- (8) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation; and shall be subject to compliance with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (9) This permit cannot be sold or otherwise transferred without explicit Department approval under section 402(g) of the Federal Aviation Act of 1958, as amended.

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