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WITHDRAWAL SHEET

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Collection Name

Withdrawer

IGP 8/30/2005

File Folder JGR/CIVIL AVIATION BOARD DECISIONS (11 OF 16)

FOIA

F05-139/01

Box Number 10

COOK

72IGP

DOC NO	Doc Type	Document Description	No of Pages	Doc Date	Restrictions	
1	APPLICATION	SUMMARY APPLICATION FROM CAYMAN AIRWAYS FOR FOREIGN AIR CARRIER PERMIT (OPEN IN WHOLE)	2	ND	B4	960

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

B-3 Release would violate a Federal statute [(b)(3) of the FOIA]

B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]

B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]

B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]

B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E.O. 13233

C. Closed in accordance with restrictions contained in donor's deed of gift.

THE WHITE HOUSE

WASHINGTON

March 8, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM:

JOHN G. ROBERTS *JGR*

SUBJECT:

Haemisegger Letter to James A. Baker, III

H. Fred Haemisegger, apparently a personal friend of Mr. Baker, wrote Mr. Baker at home concerning a pending application by Swiss Air for landing rights in Houston. Haemisegger asked if it were "wise to wait until after the elections before pursuing this matter or, in your judgment, does it make any difference?"

Section 4 of Executive Order 11920 provides, in part, that:

Individuals within the Executive Office of the President shall follow a policy of (a) refusing to discuss matters relating to the disposition of a case subject to the approval of the President under section 801 with any interested private party, or an attorney or agent for any such party, prior to the President's decision, and (b) referring any written communication from an interested private party, or an attorney or agent for any such party, to the appropriate department or agency outside of the Executive Office of the President.

Mr. Baker should not, accordingly, respond directly to Haemisegger, nor should anyone in the White House discuss the merits of the Swiss Air application with Haemisegger. I do not, however, think it necessary or even appropriate to refer the Haemisegger letter to the Department of Transportation. The purpose of section 4(b), generally calling for such a referral, is to ensure that an agency outside the Executive Office of the President, rather than White House staff members, considers matters raised in correspondence that might bear upon a CAB decision. No such matter is raised in Haemisegger's foolish letter. Since he raises no substantive points, I think it best simply to advise him that discussing the matter with Mr. Baker is inappropriate, and that any concerns he may want to raise should be presented to the CAB or the appropriate department.

A draft to Haemisegger is attached, as is a transmittal to Kathy Camalier, who asked for our advice.

THE WHITE HOUSE

WASHINGTON

March 8, 1984

Dear Mr. Haemisegger:

This is written in response to your February 28 letter to James A. Baker, III. That letter concerned a pending application by Swiss Air for landing rights in Houston.

I must advise you that it would be inappropriate for Mr. Baker to discuss this matter with you or any other private party. Executive Order 11920 specifies that an individual within the Executive Office of the President shall refuse to discuss such Civil Aeronautics Board matters with an interested private party or an attorney or agent for such a party. Pursuant to the Executive Order, any questions or concerns you have should be raised directly with the CAB or the appropriate department or agency outside the Executive Office of the President.

Sincerely,

Fred F. Fielding
Counsel to the President

Mr. H. Fred Haemisegger
Post Office Box 55307
Houston, Texas 77255

FFF:JGR:aea 3/8/84
bcc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 8, 1984

MEMORANDUM FOR KATHY CAMALIER
STAFF ASSISTANT TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Haemisegger Letter to James A. Baker, III

Attached is a draft reply to the letter sent to Mr. Baker by
H. Fred Haemisegger. Unless I hear otherwise from you, I
will send the reply.

Attachment

FFF:JGR:aea 3/8/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 8, 1984

Dear Mr. Haemisegger:

This is written in response to your February 28 letter to James A. Baker, III. That letter concerned a pending application by Swiss Air for landing rights in Houston.

I must advise you that it would be inappropriate for Mr. Baker to discuss this matter with you or any other private party. Executive Order 11920 specifies that an individual within the Executive Office of the President shall refuse to discuss such Civil Aeronautics Board matters with an interested private party or an attorney or agent for such a party. Pursuant to the Executive Order, any questions or concerns you have should be raised directly with the CAB or the appropriate department or agency outside the Executive Office of the President.

Sincerely,

Orig. signed by FFF

Fred F. Fielding
Counsel to the President

Mr. H. Fred Haemisegger
Post Office Box 55307
Houston, Texas 77255

FFF:JGR:aea 3/8/84
bcc: FFFfielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 9, 1984

MEMORANDUM FOR KATHY CAMALIER
STAFF ASSISTANT TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Haemisegger Letter to James A. Baker, III

Attached is a draft reply to the letter sent to Mr. Baker by H. Fred Haemisegger. Please advise if you wish me to send this.

Thank you.

Attachment

FFF:JGR:dgh

cc: FFFielding
JGRoberts
Subject
Chron

THE WHITE HOUSE

WASHINGTON

March 8, 1984

MEMORANDUM FOR KATHY CAMALIER
STAFF ASSISTANT TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Haemisegger Letter to James A. Baker, III

Attached is a draft reply to the letter sent to Mr. Baker by H. Fred Haemisegger. Unless I hear otherwise from you, I will send the reply.

Attachment

FFF:JGR:aea 3/8/84

cc: FFFielding/JGRoberts/Subj/Chron

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**

CO/52

- ☐ **O - OUTGOING**
☐ **H - INTERNAL**
☐ **I - INCOMING**
 Date Correspondence
 Received (YY/MM/DD) 1 1

JR

Name of Correspondent:

H. Fred Haemisegger☐ **MI Mail Report**

User Codes: (A) _____

(B) _____

(C) _____

Subject:

Swiss Air application for landing
rights in Houston (Letter to Jim Bohrer)**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>W Holland</u>	ORIGINATOR	<u>84103106</u> PY			<u>1 1</u>
<u>WAT 18</u>	Referral Note:	<u>84103107</u> PY			<u>584103117</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>

ACTION CODES:

A - Appropriate Action
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 to be used as Enclosure

I - Info Copy Only/No Action Necessary
 R - Direct Reply w/Copy
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DISPOSITION CODES:

A - Answered
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 C - Completed
 S - Suspended

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
 Code = "A"
 Completion Date = Date of Outgoing

Comments:

Mar 5 84 Kathy Cavalier memo
to Fred Fielding

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

H. FRED HAEMISEGGER

210376 *au*

P. O. Box 55307
Houston, Texas 77255
February 28, 1984

Mr. James A. Baker, III
2415 Foxhall Rd.
Washington, D. C. 20007

Dear Jimmy:

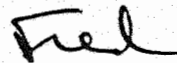
I hope you don't mind me contacting you at home, but I would like your personal opinion on the following matter. SwissAir is in the process of applying for landing rights to Houston, Texas, as they would like to have a direct non-stop flight from Zurich or Geneva to Houston. At present, they are negotiating with lower-level officials in Washington. SwissAir has obtained Baker & Botts to represent them and Thad Hutcheson is handling this particular matter.

Do you think it wise to wait until after the elections before pursuing this matter or, in your judgement, does it make any difference? I would appreciate your letting me know either by note or a call at 713/464-1787.

You are doing one hell of a job, Jimmy! Keep it up.

With best wishes and kind regards,

Sincerely,



H. Fred Haemisegger

THE WHITE HOUSE

WASHINGTON

March 8, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decision
in Cayman Airways Limited

Richard Darman's office has asked for comments by March 12 on the above-referenced CAB decision, which was submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in this case, by April 22, 1984).

The order here has been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since this order involves a foreign carrier, the proposed letter from the President to the CAB Chairman prepared by OMB omits the standard sentence designed to preserve availability of judicial review.

The order amends and reissues the certificate authorizing Cayman Airways to carry persons and freight between specified points in the Caribbean and the United States. OMB describes the order as a "routine, noncontroversial matter."

A memorandum for Darman is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

March 8, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision
in Cayman Airways Limited

Our office has reviewed the above-referenced CAB decision and related materials, 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 this order or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aea 3/8/84

cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

March 8, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *Orig. signed by FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision
in Cayman Airways Limited

Our office has reviewed the above-referenced CAB decision and related materials, 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 this order or to the substance of the letter from the President to the CAB Chairman prepared by OMB.

FFF:JGR:aea 3/8/84

cc: FFFielding/JGRoberts/Subj/Chron

JV

**WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET**CA007☐ **O - OUTGOING**☐ **H - INTERNAL**☐ **I - INCOMING**Date Correspondence
Received (YY/MM/DD) 1 1Name of Correspondent: Richard G. Norman☐ **MI Mail Report**

User Codes: (A) _____ (B) _____ (C) _____

Subject: CAB Decision Re: Cayman Airways Limited**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CW Holland</u>		ORIGINATOR	<u>84103106</u>	<u>PR</u>		<u>1 1</u>
		Referral Note:				
<u>CW AT 18</u>		<u>D</u>	<u>84103107</u>	<u>PR</u>	<u>S</u>	<u>84103112</u>
		Referral Note:				
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				

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Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/6/84 ACTION/CONCURRENCE/COMMENT DUE BY: 3/12/84

SUBJECT: CAB DECISION RE CAYMAN AIRWAYS LIMITED

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	McFARLANE	☐	☐
MEESE	☐	☐	McMANUS	☐	☐
BAKER	☐	☐	MURPHY	☐	☐
DEAVER	☐	☐	OGLESBY	☐	☐
STOCKMAN	☐	☐	ROGERS	☐	☐
DARMAN	☐ P	☒ SS	SPEAKES	☐	☐
FELDSTEIN	☐	☐	SVAHN	☒	☐
FIELDING	☒	☐	VERSTANDIG	☐	☐
FULLER	☐	☐	WHITTLESEY	☐	☐
HERRINGTON	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
JENKINS	☐	☐	_____	☐	☐

REMARKS:

May we have your comments on the attached CAB decision by c.o.b. Monday, March 12.

Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702

1984 MAR -6 AM 11: 24



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAR 5 1984

ACTION

MEMORANDUM FOR: ASSISTANT TO THE PRESIDENT
AND DEPUTY TO THE CHIEF OF STAFF

SUBJECT: Civil Aeronautics Board Decision:

Cayman Airways Limited
Docket 41647
Date due: April 22, 1984

You will find attached a memorandum for the President about the above international aviation case. The interested executive agencies have reviewed the Board's decision and have no objection to the proposed order.

This is a routine, noncontroversial matter. No foreign policy or national defense reasons for disapproving the Board's order have been identified. I recommend that the President sign the attached letter to the Chairman which indicates that he does not intend to disapprove the Board's order within the 60 days allowed by statute. Otherwise, the Board's order becomes final on the 61st day.

Original signed by
Constance Horner

Constance Horner
Associate Director
Economics and Government

Attachments:

Memorandum to the President
CAB letter of transmittal
CAB order
Letter to the Chairman



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAR 5 1984

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision:

Cayman Airways Limited
Docket 41647
Date due: April 22, 1984

The Civil Aeronautics Board proposes to take the following action with regard to the above international air case:

- Amend and reissue, for an indefinite period, the certificate authorizing Cayman Airways Limited to engage in foreign air transportation of persons, property, and mail. The amendments to the reissued certificate allow Cayman Airways, in its service to and from the Cayman Islands, to add certain intermediate Caribbean points and the new coterminal points of Baltimore, Washington, D.C., Puerto Rico, and the U.S. Virgin Islands.

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

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

Original signed by
Constance Horner

Constance Horner
Associate Director
Economics and Government

Attachments:

CAB letter of transmittal
CAB order
Letter to the Chairman

Options and Implementation Actions:

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

THE WHITE HOUSE

WASHINGTON

Dear Mr. Chairman:

I have reviewed the order proposed by the Civil Aeronautics Board in the following case:

Cayman Airways Limited
Docket 41647

I have decided not to disapprove the Board's order.

Sincerely,

The Honorable Dan McKinnon
Chairman
Civil Aeronautics Board
Washington, D.C. 20428



~~FOR OFFICIAL USE ONLY~~

THE CHAIRMAN
OF THE
CIVIL AERONAUTICS BOARD

WASHINGTON, D. C. 20428

FEB 22 1984

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I transmit the Board's proposed order on the application of Cayman Airways Limited, Docket 41647, for your consideration under section 801(a) of the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978. The order will adopt the Board's decision establishing simplified procedures and issue an amended permit to the applicant unless you disapprove it within 60 days of this transmittal.

If you should decide earlier that you will not disapprove, please advise me to that effect; this will allow the earlier issuance of the authority.

We are submitting the proposed decision to you before publication under the provisions of section 801(a) of the Federal Aviation Act of 1958. In accordance with Executive Order 11920, however, we plan to release all unclassified portions of the decision on or after the sixth day following this transmittal unless notified by your Assistant for National Security Affairs.

Respectfully yours,

signed Dan McKinnon

Dan McKinnon

Enclosures

~~FOR OFFICIAL USE ONLY~~

amp 8/4/15

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 17th day of February, 1984

Application of :
:
CAYMAN AIRWAYS LIMITED : Docket 41647
:
for renewal and modification of its :
foreign air carrier permit pursuant :
to section 402 of the Federal Aviation :
Act of 1958, as amended :

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

By application filed August 12, 1983, and amended January 27, 1984, Cayman Airways Limited (CAL) requests renewal and amendment of its foreign air carrier permit issued by Order 78-8-72 for a five-year term. 1/ CAL proposes that its permit be amended to authorize the services prescribed under U.K. Routes 9 (Caribbean combination air service) and U.K. Route 16 (Caribbean all-cargo service) of the United States-United Kingdom Air Services Agreement (Bermuda II), for an indefinite period of time. Specifically, CAL seeks authority to carry passengers, property and mail: 2/

Between a point or points in the Cayman Islands; intermediate points in the Bahamas, Barbados, Dominican Republic, Grenada, Guadeloupe, Guyana, Haiti, Jamaica, Martinique, St. Maarten, St. Martin, Trinidad and Tobago, Antigua and Barbuda, Dominica, St. Christopher (St. Kitts)-Nevis-Anguilla, St. Lucia, St. Vincent, Belize, British Virgin Islands, Montserrat, and the Turks and Caicos; and the coterminal points Puerto Rico, the U.S. Virgin Islands, Miami and Tampa Florida, Houston, Texas, New Orleans, Louisiana, Baltimore, Maryland, and Washington, D.C.

1/ CAL's current permit authorizes the carrier to engage in foreign air transportation of:

(1) persons, property and mail between a point or points in the Cayman Islands and the coterminal points Houston, Texas, Miami, Florida, and New Orleans, Louisiana; and

(2) property and mail only between a point or points in the Cayman Islands and the coterminal points Miami, Florida and Tampa, Florida.

2/ In its January 27 amendment to the application, CAL requested the deletion of Cuba as an intermediate point. In view of the non-controversial nature of the amendment, we have decided to proceed without awaiting the full 28-day period for answers.

In support of its application Cayman Airways states that: it is a citizen of the Cayman Islands, a dependency of the United Kingdom; it is wholly owned by the Cayman Islands Government; it is designated by the United Kingdom to perform the services under U.K. Routes 9 and 16 of Bermuda II; the requested modifications to its permit are needed to develop alternative marketing strategies to provide the highest level of service possible under the Bermuda II Agreement; and it is fit to operate the authority requested.

No answers have been filed to the application.

Decision

We have reviewed the record thoroughly, including the application which is summarized in Attachment A, and have decided to grant the application using the simplified Subpart Q procedures. ^{3/} The public was informed of Cayman Airways' application by notices in the Federal Register ^{4/} and our 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 announcements have provided the public the required notice and filing opportunities. Simplified procedures are appropriate in this case because there are no material determinative issues of fact requiring other procedures.

Ownership and Control

CAL is a citizen of the Cayman Islands which continues to be a dependency of the United Kingdom. Sixty percent of the carrier's capital stock is held for and on behalf of the Cayman Islands Government, by the Governor of the Cayman Islands. The remaining forty percent is owned by Cayman Air Holdings Limited which is a corporation organized and existing under the laws of the Cayman Islands and is wholly owned for and on behalf of the Cayman Islands Government. The Cayman's Portfolio of Tourism, Aviation and Trade has general jurisdiction and overall policy making responsibility for the affairs of Cayman Airways Limited and of Cayman Air Holding Limited. Accordingly, it is clear that substantial ownership is in the Cayman Islands' Government.

Managerial policy and decisions regarding Cayman Airways Limited are made by the company's Board of Directors. Of the 11 member Board of Directors, eight are Caymanian (including the Chairman), one a British citizen, one a U.S. citizen, and one an Australian. Thus, overall policy control is substantially vested in Caymanian citizens. Nevertheless, of the nine key management personnel, only four are Caymanian; two are U.S. citizens (one of which is managing director), one is Canadian, one is British, and one is Jamaican. There does not appear, however, to be any

^{3/} 14 CFR 302.1701 et seq. Under Rule 29(b) we may, at our 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 object to grant of authority under section 402 of the Act.

^{4/} Public notice of the Cayman Airways' application was published in the Federal Register (48 FR 38060) dated August 22, 1983.

problems associated with the non-Caymanian management. Accordingly, to the extent that carrier management control may be exercised by the non-Caymanian nationals, we will waive our substantial control policy. (See Air Jamaica, Order 80-9-14.)

On the basis of the foregoing information, we conclude that the applicant is owned by the Government of the Cayman Islands and controlled by nationals of the Cayman Islands.

Operating and Financial Fitness

We are satisfied with the applicant's qualifications to conduct scheduled service via certain new foreign intermediate points, as well as to add Baltimore, Washington, Puerto Rico and the U.S. Virgin Islands as coterminal points in the United States. Air services to these points fall within the scope of CAL's current operations. Cayman Airways' initial foreign air carrier permit was issued pursuant to Order 71-11-100, and was renewed and amended by Order 78-8-72. The applicant requested and was granted, by Order 83-9-16, an exemption to serve Turks and Caicos as an intermediate point on its Cayman Island-Miami service. CAL's evidence in Docket 41647, and its operations conducted under its current permit, satisfy us that it is fit to expand its United States operations under a renewed permit. 5/ The Government of the Cayman Islands has renewed, until August 9, 1988, Cayman Airways' Air Service License. 6/

As of the year ended June 30, 1982, Cayman Airways had total assets of \$12 million and owners' equity deficit of \$500,000. The carrier experienced operating losses of almost \$3 million in both 1981 and 1982. However, Cayman Airways appears to have adequate sources of additional capital, should financing become necessary. 7/

No party has challenged the applicant's fitness, and we find and conclude that Cayman Airways is financially and operationally fit to conduct the proposed operations. There is no evidence of adverse compliance disposition.

Public Interest

Cayman Airways is designated by the United Kingdom Government for services on U.K. Routes 9 and 16 of section 3 and 4 of Annex 1 of Bermuda II. The Board, in 1978, adopted the Administrative Law Judge's recommendation that Cayman Airways' permit should be limited to five years. The Judge noted that Cayman Airways authority from its own Government was to expire on December 31, 1983, and that, more importantly,

5/ By letter dated October 7, 1983, the Federal Aviation Administration advised the Board that CAL conducts its operations in accordance with Part 129 of the Federal Aviation Regulations, and that it knows of no reason why we should act unfavorably on the application. A copy of the FAA's letter has been placed in the correspondence section of Docket 41647.

6/ Under Cayman law, an aviation license may not be in effect for a period longer than five years.

7/ In 1982 the Government of the Cayman Islands converted loans to CAL of \$8.3 million into share capital. See Attachment A and Exhibit 1001.2, Notes 7 and 9 of Docket 41647.

the applicant was in a state of transition from a company which was owned 49 percent by LACSA (a Costa Rican carrier) to a company 100 percent owned for and by the Government of the Cayman Islands. We find that Cayman Airways has effectively completed its transition to Caymanian ownership and control. While the Cayman Islands still limits the carrier's term of authority to five year increments, this alone is not a sufficient basis for limiting the term of CAL's permit. Condition (7) of the attached permit prohibits operations under the permit if the carrier does not hold effective authority from its government. In addition, although some question exists as to the carrier's Caymanian management control, it is clear that the general policies of the company are set by the Caymanian Board of Directors, substantial ownership is clearly Caymanian, and there does not appear to be any problem of managerial control exercised individually or collectively by citizens of any other country. Therefore, we find that it is consistent with the public interest to renew and amend Cayman Airways Limited's foreign air carrier permit for an indefinite period of time.

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

1. The applicant is qualified and has been designated by the United Kingdom to perform the air services described in the attached foreign air carrier permit;
2. The applicant 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 our rules, regulations and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit shall 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. Amendment and reissuance of this foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy Conservation Act of 1975, as defined in section 313.4(a)(1) of our Regulations; 8/ and
5. The public interest does not require an oral evidentiary hearing on the application.

8/ Our finding is based upon the fact that the proposed operations will not result in a near-term annual increase in fuel consumption in excess of 10 million gallons.

ACCORDINGLY,

1. We amend and reissue, in the form attached, the foreign air carrier permit issued to the applicant by Order 78-8-72, to authorize, among other things, scheduled and charter air service of passengers, property and mail between the United States and the Cayman Islands via named intermediate points;
2. We deny, except to the extent granted, the application and other requests for relief in this docket;
3. The Secretary of the Board shall sign the permit on our behalf and shall affix the seal of the Board;
4. Unless disapproved by the President of the United States under section 801(a) of the Act, this order with the attached permit shall become effective on the 61st day after its submission to the President, 9/ or upon the date of receipt of advice from the President that he does not intend to disapprove the Board's order under that section whichever is earlier; and
5. We shall serve this order on the applicant, the Ambassador of the applicant's home country in Washington, D.C., the Federal Aviation Administration (AFO-220), and the Departments of State and Transportation.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR

Secretary

(SEAL)

All Members concurred.

9/ This order was submitted to the President on FEB 22 1984
The 61st day is APR 23 1984

SUMMARY OF APPLICATION

Homeland Country: Cayman Islands, B.W.I. dependency of the United Kingdom

Current Permit Issued By: Order 78-8-72, dated July 25, 1978

Authority Covered By Bilateral Agreement: Yes, Air Services Agreement between the Government of the United States of America and the Government of the United Kingdom signed on July 23, 1977, as amended (the Bermuda II Agreement).

Designated By: the Government of the United Kingdom.

Holds Government License For Authority Sought: Exhibit CAL 501, Docket 41647

Operating History: Exhibit CAL 1002 - Cayman Airways Limited has been conducting Cayman-Miami scheduled passenger, property and mail service, since May 1972; its initial permit, issued by Order 71-11-100, was effective on November 23, 1971.

Aircraft Owned (O) And Leased (L): one Hawker Siddley 748 Avro (O), one Britten Norman Trislander (O), and two Boeing 727-227 (L)

Aircraft Maintenance Performed By: 727-227 by Eastern Air Lines, Miami; Hawker Siddley 748 by Dan Air in Manchester, England and Eastern Air Lines in Miami; Britten Norman by Cayman Airways

Financial Indicators (Last 2 Years):	June 30, 1981 (Millions)	June 30, 1982 (Millions)
Total Assets	\$ 5.3	\$ 12.0
Total Liabilities	11.0	12.5
Owners' Equity	(5.7)	(.5)
Operating Profit (Loss)-12 months ended	(2.9)	(2.8)

Majority Ownership By Nationals Of: The Cayman Islands, government owned

Effective Control By Nationals Of: Combination of Caymanian and non-Caymanian management control

Insurance Coverage: Yes

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

Failed To Meet Current Financial Obligations Last 3 Years: No

Attachment A
Page 2 of 2

Safety Violations During Last 5 Years: No

Tariff Violations During Last 5 Years: No

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

Near-term Annual Fuel Consumption Exceeds 10 Million Gallons: No

Other: By letter dated October 7, 1983, the FAA's Air Transport Division,
Office of Flight Operations, stated that Cayman Airways conducts its U.S.
operations in accordance with FAR Part 129, and that it knows of no reason
why the Board should act unfavorably on Cayman Airways' application.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

PERMIT TO FOREIGN AIR CARRIER
(as amended and reissued)

CAYMAN AIRWAYS LIMITED

is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958, as amended, and the Board's orders, rules and regulations, to engage in foreign air transportation of persons, property, and mail, as follows:

Between a point or points in the Cayman Islands; intermediate points in the Bahamas, Barbados, Dominican Republic, Grenada, Guadeloupe, Guyana, Haiti, Jamaica, Martinique, St. Maarten, St. Martin, Trinidad and Tobago, Antigua and Barbuda, Dominica, St. Christopher (St. Kitts)-Nevis-Anguilla, St. Lucia, St. Vincent, Belize, British Virgin Islands, Montserrat, and the Turks and Caicos Islands; and the coterminal points Puerto Rico, and the U.S. Virgin Islands, Miami and Tampa, Florida, Houston, Texas, New Orleans, Louisiana, Baltimore, Maryland, and Washington, D.C.

The holder shall be authorized to engage in charter trips in foreign air transportation subject to the terms, conditions, and limitations prescribed by the Board's Regulations governing charters.

This permit and 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 serve more than two of the following coterminal points in the United States during a traffic season: Miami, Houston, New Orleans, Tampa, Baltimore, Washington, D.C.; provided that it may, in its discretion, with not less than 90 days notice, change from one of these coterminal points to another each season.

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 during the period this permit remains in effect, to which the United States and the United Kingdom of Great Britain and Northern Ireland 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 effective date of any treaty, convention, or agreement, or amendment to it, which shall have the effect of eliminating the routes here authorized from the routes which may be operated by airlines designated by the Government of the United Kingdom (or in the event of elimination of any part of a route or routes here authorized, the authority granted shall terminate to the extent of such elimination); or (2) upon the effective date of any permit granted by the Board to any carrier designated by the Government of the United Kingdom in lieu of the holder; or (3) on the termination or expiration of the Air Services Agreement between the Governments of the United States and the United Kingdom (Bermuda II), as amended (or in the event of the termination, expiration, or amendment of any part of one Agreement, the authority granted by this permit shall cease to the extent of such termination, expiration or amendment). However, clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation here authorized becomes the subject of any treaty, convention, or agreement to which the United States and the United Kingdom are or shall have become parties.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on February 17, 1984.

PHYLLIS T. KAYLOR

Secretary

(SEAL)

ATTACHMENT

PERMIT TO FOREIGN AIR CARRIER

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 Board, all flights to/from the United States (or its territories or possessions) 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 Board.

(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 Board.

* * * *

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Civil Aeronautics Board Decisions
in Eastern Air Lines, Inc. and
Northeastern International Airways, Inc.

This memorandum is addressed to you because of the involvement of Eastern Air Lines in both of the subject decisions.

Richard Darman's office has asked for comments by April 6 on the above-referenced CAB decisions, which were submitted for Presidential review as required by § 801(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 1461(a). Under this section, the President may disapprove, solely on the basis of foreign relations or national defense considerations, CAB actions involving either foreign air carriers or domestic carriers involved in foreign air transportation. If the President wishes to disapprove such CAB actions, he must do so within sixty days of submission (in these cases, by April 24 and May 1 respectively).

The orders here have been reviewed by the appropriate departments and agencies, following the procedures established by Executive Order No. 11920 (1976). OMB recommends that the President not disapprove, and reports that the NSC and the Departments of State, Defense, Justice and Transportation have not identified any foreign relations or national defense reasons for disapproval. Since these orders involve domestic carriers, the proposed letter from the President to the CAB Chairman prepared by OMB includes the standard sentence designed to preserve availability of judicial review.

The Eastern Air Lines order denies a request by that carrier for backup authority between Miami and London, on the basis of the CAB's policy not to grant such backup authority in the absence of special circumstances. The Northeastern International order grants a certificate to that carrier to engage in service on a New York-Miami-Bermuda route. OMB describes these orders as "routine, noncontroversial matters."

A memorandum for Darman is attached for your review and signature. The memorandum notes that Mr. Fielding did not participate in the review of this matter.

Attachment

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER /s/
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision
in Eastern Air Lines, Inc. and
Northeastern International Airways, Inc.

Our office has reviewed the above-referenced CAB decisions and related materials, 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 CAB Chairman prepared by OMB.

Mr. Fielding did not participate in the review of this matter.

RAH:JGR:aea 4/3/84

cc: FFFielding/RAHauser/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

April 3, 1984

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decision
in Eastern Air Lines, Inc. and
Northeastern International Airways, Inc.

Our office has reviewed the above-referenced CAB decisions and related materials, 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 CAB Chairman prepared by OMB.

Mr. Fielding did not participate in the review of this matter.

RAH:JGR:aea 4/3/84

cc: FFFielding/RAHauser/JGRoberts/Subj/Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1/1/Name of Correspondent: Richard G. Darman☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: CAB Decision re: Eastern Air Lines, Inc.
and Northeastern Intl. Airways, Inc.

ROUTE TO:

ACTION

DISPOSITION

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CW Holland</u>		ORIGINATOR	<u>84/04/02</u>			<u>1/1</u>
<u>CWAT18</u>		Referral Note: <u>D</u>	<u>84/02/03</u>			<u>584/04/06</u>
		Referral Note:	<u>1/1</u>			<u>1/1</u>
		Referral Note:	<u>1/1</u>			<u>1/1</u>
		Referral Note:	<u>1/1</u>			<u>1/1</u>
		Referral Note:	<u>1/1</u>			<u>1/1</u>

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

FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
Code = "A"
Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
Send all routing updates to Central Reference (Room 75, OEOb).
Always return completed correspondence record to Central Files.
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 3/30/84 ACTION/CONCURRENCE/COMMENT DUE BY: 4/6/84

SUBJECT: CAB DECISION RE EASTERN AIR LINES, INC. AND NORTHEASTERN INTL.
AIRWAYS, INC.

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	McFARLANE	☐	☒
MEESE	☐	☐	McMANUS	☐	☐
BAKER	☐	☐	MURPHY	☐	☐
DEAVER	☐	☐	OGLESBY	☐	☐
STOCKMAN	☐	☐	ROGERS	☐	☐
DARMAN	☐ P	☐ SS	SPEAKES	☐	☐
FELDSTEIN	☐	☐	SVAHN	☒	☐
FIELDING	☒	☐	VERSTANDIG	☐	☐
FULLER	☐	☐	WHITTLESEY	☐	☐
HERRINGTON	☐	☐	_____	☐	☐
HICKEY	☐	☐	_____	☐	☐
JENKINS	☐	☐	_____	☐	☐

REMARKS:

May we have your comments by April 6. Thank you.

RESPONSE:

Richard G. Darman
Assistant to the President
Ext. 2702

1984 MAR 30 PM 6:40



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

MAR 29 1984

ACTION

MEMORANDUM FOR: ASSISTANT TO THE PRESIDENT
AND DEPUTY TO THE CHIEF OF STAFF

SUBJECT: Civil Aeronautics Board Decisions:

Eastern Air Lines, Inc.
Docket 41928
Date due: April 24, 1984

Northeastern International
Airways, Inc.
Docket 41231
Date due: May 1, 1984

You will find attached a memorandum for the President about the above international aviation cases. The interested executive agencies have reviewed the Board's decisions and have no objection to the proposed orders.

These are routine, noncontroversial matters. No foreign policy or national defense reasons for disapproving the Board's orders have been identified. I recommend that the President sign the attached letter to the Chairman which indicates that he does not intend to disapprove the Board's orders within the 60 days allowed by statute. Otherwise, the Board's orders become final on the 61st day.

Original signed by
Constance Horner

Constance Horner
Associate Director
Economics and Government

Attachments:

Memorandum to the President
CAB letters of transmittal
CAB orders
Letter to the Chairman



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAR 29 1984

ACTION

MEMORANDUM FOR THE PRESIDENT

SUBJECT: Civil Aeronautics Board Decisions:

Eastern Air Lines, Inc.
Docket 41928
Date due: April 24, 1984

Northeastern International
Airways, Inc.
Docket 41231
Date due: May 1, 1984

The Civil Aeronautics Board (CAB) proposes to take the following actions with regard to the above international aviation cases:

- Deny the request of Eastern Air Lines, Inc., for a certificate and an exemption giving Eastern backup authority to engage in foreign air transportation of persons, property, and mail between Miami and London. The Board noted that, absent any special circumstances, none of which are present in this case, it has consistently denied such backup authority to other airlines.
- Issue a certificate to Northeastern International Airways, Inc., authorizing it to engage in scheduled air transportation between the coterminal points of New York, New York, and Miami, Florida, and the terminal point of Bermuda. During the Board's proceedings, the British and Bermudian governments expressed the concern that the decision may adversely affect air carrier service to the island during the off-peak season. In issuing this certificate, the Board responded that this concern has already been addressed in past CAB decisions on U.S.-Bermuda routes and that the decision is consistent with the policy of promoting competition in air transportation to the fullest possible extent.

The Departments of State, Defense, Justice, and Transportation and the National Security Council 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 the Board's decisions by signing the attached letter to the Chairman which indicates that you do not intend to disapprove the Board's orders within the 60 days allowed by statute for your

review. Also, OMB recommends that you state in your letter that no national defense or foreign policy reason underlies your actions. This will preserve whatever opportunity is available under the statute for judicial review.

Original signed by
~~Constance Horner~~

Constance Horner
Associate Director
Economics and Government

Attachments:

CAB letters of transmittal
CAB orders
Letter to the Chairman

Options and Implementation Actions:

- () 1) Approve the Board's orders and preserve whatever opportunity is available for judicial review (DOS, DOD, DOJ, DOT, NSC, OMB).
-- Sign the attached letter to the Chairman.
- () 2) Approve the Board's orders and do nothing to preserve whatever opportunity is available for judicial review.
-- Implementation materials to be prepared.
- () 3) Disapprove the Board's orders.
-- Implementation materials to be prepared.
- () 4) See me.

THE WHITE HOUSE
WASHINGTON

Dear Mr. Chairman:

I have reviewed the orders proposed by the Civil Aeronautics Board in the following cases:

Eastern Air Lines, Inc.
Docket 41928

Northeastern International
Airways, Inc.
Docket 41231

I have decided not to disapprove the Board's orders. No foreign relations or national defense reason underlies my actions.

Sincerely,

The Honorable Dan McKinnon
Chairman
Civil Aeronautics Board
Washington, D.C. 20428

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 23rd day of February, 1984

Application of :
EASTERN AIR LINES, INC. : Docket 41928
for a certificate of public :
convenience and necessity (Miami-London):

ORDER DENYING APPLICATION

On January 9, 1984, Eastern Air Lines, Inc. filed an application in Docket 41928 for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property and mail between Miami and London. On the same date, it filed an application in Docket 41927 for an exemption from the provisions of section 401 of the Act to permit it to operate in the Miami-London market. Both applications indicate that Eastern is seeking replacement, or backup, authority to be used in the event that one of the Miami-London incumbents ceases service.

On February 6, 1984, Air Florida answered Eastern's application. In its answer, Air Florida asserts that the Board should dismiss Eastern's application and incorporates by reference its answer to Eastern's exemption application.

By Order 84-2-99, we found that the grant of the exemption requested by Eastern would be contrary to our policy of refusing to grant supplemental backup authority in limited-entry markets after the initial grant of backup authority has expired. Eastern has not demonstrated that any special circumstances exist that would warrant a departure from that policy, either in the instant application or in connection with its exemption request.

Therefore, based on the considerations discussed in Order 84-2-99, and the cases cited therein, we find that grant of Eastern's application would not be consistent with the public convenience and necessity.

anf 8/4/05

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 23rd day of February, 1984

-----	:	
Application of	:	
	:	
EASTERN AIR LINES, INC.	:	Docket 41927
	:	
for an exemption pursuant to section	:	
416(b) of the Federal Aviation Act of	:	
1958, as amended (Miami-London)	:	
-----	:	

ORDER DENYING EXEMPTION

On January 9, 1984, Eastern Air Lines, Inc. filed an application for exemption authority to engage in foreign air transportation between Miami and London in the event that one of the carriers presently designated to provide Miami-London service should suspend its service.¹ In support of its application, Eastern claims that it has system strength at Miami and that it can readily acquire the aircraft necessary to begin nonstop service. It asserts that continued service between the two points is in the public interest, and that grant of its application would preserve effective intergateway competition.

Air Florida, Inc. filed an answer to Eastern's exemption application, urging the Board promptly to dismiss Eastern's request. Among other things, Air Florida argues that the Board should apply its consistent policy of denying such requests for backup authority in similar situations.

In a reply dated January 27, 1984, Eastern contends that it is also the Board's policy to avoid service disruptions in limited-entry markets and urges the Board to award it the requested exemption authority.

We have decided to deny Eastern's exemption application. The carrier has applied for backup authority over the Miami-London route, which is a limited-entry route under the United States-United Kingdom Air Transport Services Agreement. The Board has consistently denied applications for backup authority on limited-entry routes after the initial backup award has expired, unless extraordinary circumstances were present.² The Board's experience demonstrates that the benefits that might be gained from

1/ On the same date, it filed an application for Miami-London backup certificate authority in Docket 41928, which will be the subject of a separate order.

2/ Orders 83-3-41, February 24, 1983, 83-8-4, June 16, 1983, 83-8-5, June 28, 1983 and 83-6-76, May 3, 1983.

~~FOR OFFICIAL USE ONLY~~

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 1st day of March, 1984

----- :
Application of :
: :
: :
NORTHEASTERN INTERNATIONAL AIRWAYS, INC. : :
: :
for issuance of a certificate of public :
convenience and necessity under section 401 :
of the Federal Aviation Act of 1958, as :
amended :
----- :

Docket 41231

ORDER ESTABLISHING SIMPLIFIED PROCEDURES
AND ISSUING CERTIFICATE

On January 20, 1983, Northeastern International Airways, Inc. filed an application under section 401 of the Act requesting a certificate of public convenience and necessity authorizing it to provide scheduled air transportation between Islip, New York, and Miami/Ft. Lauderdale, on the one hand, and Bermuda, on the other. It requested that its application be processed under the expedited procedures set forth in Subpart Q of the Board's Procedural Regulations (14 CFR §302.1701 et seq.). By letter dated October 5, 1983, Northeastern withdrew its request for Ft. Lauderdale-Bermuda authority. By amendment dated December 5, 1983, the carrier substituted New York, New York, for Islip as a terminal point, and confirmed that it was no longer seeking Ft. Lauderdale-Bermuda certificate authority.

In support of its application, Northeastern states that grant of this authority will give it greater flexibility to meet market demand; that its service will provide the public with additional service options; and that it is fit, willing and able to provide the service proposed in its application.

Inf 8/10/05

We received answers in opposition to Northeastern's original application from Eastern Air Lines, American Airlines, and the Government of Bermuda. We also received opposition comments in the form of two notes from the British Embassy in Washington, D.C. We received a reply in support of the application from Islip, Long Island. 1/

The views expressed in these pleadings stemmed primarily from Northeastern's plan to serve Bermuda from Islip and from Fort Lauderdale. Northeastern has now amended its application. Its present application refers only to New York and Miami. Thus, much of the opposition to Northeastern's application effectively has been mooted. 2/

The opposition that remains comes from the Bermudan and British Governments and concerns general public convenience and necessity issues regarding Northeastern's proposed service from New York. 3/ Both Governments point out the importance to Bermuda's tourist-oriented economy of ensuring year-round service to the island. They express concern that Northeastern, as a less well-established carrier, might only enter the market for the summer season, thereby skimming traffic and throwing into question the service that would be offered by the "stable" carriers now serving the island. Bermuda claims that Northeastern's entry would be unlikely to have any procompetitive effects or to improve service options for the traveling public. The British Government adds that concerns expressed by Bermuda over the potential negative effects of Northeastern's

1/ Islip's reply included a motion for leave to file. We shall grant the motion.

2/ American filed an answer opposing even the amended application. American cited Northeastern's failure to amend its service proposal to reflect the change in its application. Bermuda, for its part, filed a motion for extension of time (indefinite, or in the alternative, until February 16, 1984) to answer the amended application, saying it needed clarification of Northeastern's plans. Northeastern responded to Bermuda's motion, opposing it but at the same time providing clarification and a revised service proposal. Bermuda filed an answer on February 9, 1984, accompanied by a motion for leave to file an otherwise unauthorized document. We shall grant this motion, and in light of our doing so, we shall dismiss Bermuda's earlier motion for extension as moot. Bermuda filed two further motions, one to accept an otherwise unauthorized document and the other to take official notice of the document. The motions are unopposed, and we shall grant them. In light of all the pleadings now of record, we feel that American's and Bermuda's concerns on the airport gateway issue have been dealt with fully and that the matter is no longer an issue in this proceeding.

3/ Neither Bermuda nor the United Kingdom opposes the request for Miami-Bermuda authority.

entry are a good example of the circumstances envisaged in the United States-United Kingdom exchange of letters dealing with additional U.S. designations to Bermuda. ^{4/}

We have decided to grant Northeastern's application, as amended. ^{5/} We find that the grant of the requested authority is consistent with the public convenience and necessity. It has the potential to provide new service options in the New York-Bermuda and Miami-Bermuda markets, a stimulus to incumbent services and overall benefits to the traveling public. It is consistent with our policy of promoting competition in air transportation to the fullest possible extent. ^{6/} It is also consistent with the Bermuda 2 Agreement, which permits multiple awards of Bermuda authority at the New York and Miami gateways, the only gateways remaining at issue in this proceeding. ^{7/}

We have carefully considered the comments of the British and Bermudian Governments. As Bermuda itself acknowledges, ^{8/} these arguments have been presented to us in the past. In each instance, we have found them insufficient to justify a departure from our policy of multiple

^{4/} Boyd/Shovelton Exchange, July 23, 1977.

^{5/} We find that an oral evidentiary hearing or show-cause procedures are unnecessary since there are no material, determinative issues of fact requiring such procedures for their resolution.

^{6/} See especially subsections 102(a)(9) and 102(a)(10) of the Act.

^{7/} In addition, a standard condition in Northeastern's certificate requires it to conduct operations in accordance with all treaties and agreements between the United States and other countries.

^{8/} March 31, 1983 Answer of the Government of Bermuda, at 4, n. 9, and accompanying text.

entry. ^{9/} Neither Bermuda nor the British Embassy has provided any new information or argument that would cause us now to reach a different conclusion.

Bermuda has tried to find support for its views in our recent order instituting the United States-Venezuela All-Cargo Proceeding (Order 83-12-38). But that case hardly advances Bermuda's argument. The very passage in our order that Bermuda cites to us shows that our concern was not over whether we could or should certificate a new carrier to Venezuela, but rather over whether we should grant a carrier short-term exemption authority prior to completion of the certification case. At no time did we intimate that it would be inconsistent with the public convenience and necessity for us to proceed on certification.

We further find, based on officially noticeable data, that Northeastern is a citizen of the United States and is fit, willing, and able to perform properly the proposed service and to confirm to the requirements of the Act and our Regulations. ^{10/}

We have analyzed the operating and fuel data submitted by Northeastern, and conclude that the proposed service would not require an environmental assessment under the standards set forth in our Regulations (14 C.F.R. 312.10) or constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975 (See 14 C.F.R. 313.4). ^{11/}

ACCORDINGLY,

1. We amend the certificate of Northeastern International Airways, Inc. for Route 344-F in the form attached;
2. To the extent not granted, we deny the application of Northeastern International Airways, Inc. in Docket 41231;
3. We grant the motion of Islip, Long Island, for leave to file late;
4. We dismiss the motion of the Government of Bermuda for extension of time;

^{9/} See, e.g. United States-Bermuda Additional Service, Order 80-7-97; Philadelphia-Bermuda Nonstop Proceeding, Order 78-12-192.

^{10/} See Order 83-12-77.

^{11/} Northeastern estimates a net annual increase in its fuel consumption resulting from implementation of its proposed service of fewer than 3.6 million gallons, well below the 10 million gallon threshold for identifying a "major regulatory action."

5. We grant the January 4, 1984, motions of the Government of Bermuda for leave to file an otherwise unauthorized document and for our taking official notice of that document;

6. We grant the February 9, 1984, motion of the Government of Bermuda for leave to file an otherwise unauthorized document;

7. Unless disapproved by the President pursuant to section 801(a) of the Federal Aviation Act, this order shall become effective on the 61st day after it is submitted to the President, ^{12/} or upon the date of receipt of advice from the President that he does not intend to disapprove the Board's order, whichever occurs earlier; and

8. We will serve a copy of this order on American Airlines, Inc., Eastern Air Lines Inc., Northeastern International Airways, Inc., the Government of Bermuda, the Ambassador of the United Kingdom in Washington, D.C., on the City of Islip, Long Island, and on the U.S. Departments of State and Transportation.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR
Secretary

(SEAL)

All Members concurred.

^{12/} This order was submitted to the President on **MAR 2 1984**
The 61st day is **MAY 2 1984**

Certificate Amendment 1/

Northeastern International Airways, Inc. for Route 344-F

Add a new segment:

"Between the coterminal points New York, NY and Miami,
FL, and the terminal point Bermuda."

Certificate Amendment Effective:

1/ This amends the certificate issued by Order 83-12-77.