

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Request of)	
)	
LONGTAIL AVIATION INTERNATIONAL LIMITED))	Docket OST-2004-19978
)	
To Renew and Amend Exemption Authority)	
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)	

ANSWER OF ATLAS AIR, INC. TO
REQUEST OF LONGTAIL INTERNATIONAL AVIATION LIMITED
TO RENEW AND AMEND EXEMPTION AUTHORITY

Communications with respect to this document should be served on:

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June 25, 2020

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Longtail Aviation International Limited (“Longtail”) has filed a request to renew and amend its exemption authority to/from United States, granted most recently by Notice of Action Taken, April 23, 2019. Although subsequently clarified, the request remains vague and unclear. Atlas Air, Inc. (“Atlas”) opposes grant of the referenced request in its current form.

In support of its position, Atlas states as follows:

1. Longtail is Bermuda-based air carrier. In 2005, its corporate predecessor, Longtail Aviation, Ltd., obtained exemption authority to conduct on-demand passenger charter operations between Bermuda and the United States, and other passenger charters in accordance with 14 C.F.R. Part 212, using small equipment. See Notice of Action Taken, February 18, 2005, Docket OST-2004-19978.
2. Over the past 15 years, the Department has regularly renewed Longtail’s passenger authority, most recently by Notice of Action Taken, April 23, 2019, Docket

DOT-OST-2004-19978. On April 16, 2020, Longtail filed a comprehensive renewal application, asserting, *inter alia*, that it remains a Bermuda-based air carrier conducting “on-demand, passenger charter operations between Bermuda and the United States and Fifth and Seventh Freedom passenger charters subject to prior approval under 14 CFR Part 212.” The applicant states it is regulated by the Bermuda Civil Aviation Authority and holds Part 129 Operations Specifications overseen by the Federal Aviation Administration in Miami. The application further lists a single aircraft on its Operations Specifications, a Boeing 737-73W passenger aircraft.

3. On June 22, 2020, through newly identified counsel, Longtail filed a Request to Renew and Amend its Exemption Authority (the “Request to Amend”). Noting that the April 16 renewal application is pending and that the on-demand passenger authority remains in effect under the Administrative Procedure Act, Longtail asserts that it has recently acquired a Boeing 747 freighter aircraft, which it intends to use to operate charters carrying PPE cargo in response to demand created by COVID-19. Specifically citing the Air transport Agreement Between the Government of the United States of America and the Government of the United Kingdom and Northern Ireland, *ad referendum* on November 28, 2018, (the “U.S.-UK Open Skies Agreement”), Longtail requests unrestricted authority to perform foreign charter air transportation of persons, property and mail from points behind the territory of the United Kingdom, via the United Kingdom, to the United States and beyond. Longtail also requested unlimited 7th freedom all-cargo rights.

4. The U.S.-UK Open Skies Agreement, of course, is not yet in effect and, indeed, is not even self-executing. In negotiating the document, the two governments intended to come to agreement upon the text that will be brought into effect by further

action of the parties at such time as aviation services between the U.S. and the UK cease being covered by the U.S.-EU air services agreement. The timing of that occurrence will be driven by the results of the negotiation by the governments of the United Kingdom and the European Commission about post-BREXIT implementation.

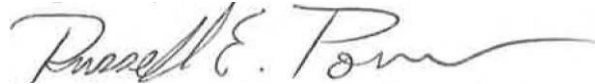
5. Given the ambiguity as to when the U.S.-UK Open Skies Agreement will take effect, it would be inappropriate for the Department to grant authority to Longtail on the basis of rights set forth in the agreement. This is especially true with respect to 7th freedom all-cargo rights, which Atlas and other U.S. carriers do not currently enjoy to/from the United Kingdom.

6. On June 23, 2020, Longtail submitted a clarification of its Request to Amend (the “Clarification”). Apparently accepting that the U.S.-UK Open Skies Agreement is not yet in effect, Longtail now requests “an amendment of the exemption to enable it to operate cargo charters, based on the bilateral status currently applicable to its amendment.” Presumably, Longtail has acknowledged that the authority sought in its Request to Amend is far too broad and, specifically, that the request for 7th freedom all-cargo authority would be inappropriate and unacceptable.

7. What remains, however, is the question of what specific authority Longtail is seeking. Before the Department acts on the pending application, it should require Longtail to specify the precise authority it is seeking under the applicable air services agreement, which Atlas understands to be the so-called “Bermuda 2” agreement. The U.S.-EU air services agreement does not apply to airlines of, or services to/from, the British Overseas Territory of Bermuda. Notably, Bermuda 2 contains a variety of applicable service restrictions.

8. Finally, the Department might consider directing Longtail to file all information required by 14 C.F.R. Part 211, to the extent not already in its April 23, 2020 application. This would include, specifically, information about its specific all-cargo operating plans.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Russell E. Pommer", with a long, sweeping horizontal line extending to the right.

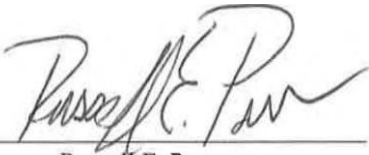
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June 25, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have, this 25th day of June 2020, caused a copy of the foregoing answer to be served by e-mail on counsel for Longtail and all persons served with Longtail's Request To Renew and Amend Exemption Authority.



Russell E. Pommer