

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Application of)	
)	
COMLUX ARUBA N.V.)	Docket DOT-OST-2021-_____
)	
for an emergency exemption pursuant to)	
49 U.S.C. § 40109(g))	

**CONFIRMING APPLICATION OF COMLUX ARUBA N.V.
FOR AN EMERGENCY EXEMPTION**

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September 23, 2021

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Pursuant to 14 C.F.R. § 302.311(b)(2), Comlux Aruba N.V. (“Comlux Aruba”) hereby confirms its oral request for, and DOT’s oral approval of, an emergency exemption pursuant to 49 U.S.C. §§ 40109(g) and 41703(c), which authorized Comlux Aruba to carry two (2) U.S. Secret Service agents from Washington Dulles International Airport (IAD) to New York (JFK) on September 22, 2021, as part of a single entity charter flight in foreign air transportation.

Comlux Aruba provides the following supporting information required under 14 C.F.R. § 302.303(d):

1. Comlux Aruba holds a foreign air carrier permit issued by DOT Order 2014-1-17 authorizing it to engage in Aruba-U.S. charter air transportation and other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department’s regulations governing charters. In accordance with this provision of its permit and 14 C.F.R. Part 212, Comlux Aruba obtained DOT approval to operate a Luanda, Angola – Washington Dulles – New York, NY – Madrid, Spain – Luanda, Angola single entity passenger charter flight during the time period September 17-30, 2021, using

its unique Boeing 767-200ER aircraft, specially configured with 51 passenger seats. See DOT Statement of Authorization #2021-1725, approved on September 9, 2021, effective through October 2, 2021.

2. Although Aviation Registry Group Ltd. chartered Comlux Aruba to operate the Luanda-U.S. round-trip flight, the ultimate charterer was the Government of Angola, and the purpose of the charter was to transport the President of Angola and his entourage to participate in the 76th United Nations General Assembly in New York City. As such, operation of the flight to, within, and from the United States was also subject to a Diplomatic Clearance issued by the U.S. Department of State.

3. On September 22, 2021, shortly before the required departure from IAD, Comlux Aruba was informed by its charterer of a requirement to carry two (2) U.S. Secret Service agents on the IAD-JFK segment. The Department of State insisted that inclusion of these agents on this domestic U.S. flight segment was appropriate and necessary for diplomatic and security reasons. Although Comlux Aruba did not request or receive any additional compensation for the carriage of these two Secret Service personnel, because the single entity charter flight in its entirety was being operated for compensation, cabotage restrictions applied to all passengers traveling on the IAD-JFK segment, including these Secret Service agents, under Department precedent and interpretations.¹

4. Consequently, given the imminence of the departure from IAD, Comlux Aruba needed to orally request (pursuant to 14 C.F.R. § 302.311(b)(2)), and the Department subsequently orally approved, emergency exemption authority for

¹ All other passengers on the JFK-IAD segment were traveling on a continuous international journey.

Comlux Aruba to carry these Secret Service agents domestically from IAD to JFK. The IAD-JFK segment subsequently departed with the agents on board.

5. This application met all of the relevant criteria for the grant of an exemption under 49 U.S.C. § 40109(g):

a. The carriage on a foreign air carrier of a visiting foreign dignitary, for whom the United States is obligated to provide security protection, constitutes unusual circumstances not arising in the normal course of business. The carriage of the Secret Service agents on the IAD-JFK segment was specifically required by the U.S. Government as a result of security concerns, diplomatic protocols, and necessities.

b. Approval of the exemption was necessary to avoid unreasonable hardship for all parties involved, and it would have been inappropriate for the United States Government to require the President of Angola, for whom Comlux Aruba's B767 was specifically chartered, to travel on a U.S. air carrier. If the oral application had not been granted, a foreign head of state's attendance at a vitally important gathering, critical to both U.S. and global diplomatic interests, would have been disrupted. Moreover, there is no indication that U.S. air carriers suffered as a result of the carriage of the Secret Service agents, who needed to travel on the same aircraft with the individuals they were assigned to protect. The domestic carriage of the Secret Service agents was tied solely to the continuous international journey of the President of Angola and his entourage.

c. Grant of this application was in the public interest and entirely consistent with Department precedent. DOT previously granted an exemption to Qantas Airways Limited ("Qantas") under very similar circumstances, by Order 93-8-40. In this case, and consistent with the facts underlying the Qantas exemption, (1) the Secret

Service was called upon to provide security on a domestic portion of a diplomatic charter flight, (2) the chartering foreign government entourage had already elected to fly on Comlux Aruba's unique 51-seat B767 aircraft (rather than an aircraft operated by a U.S. carrier), and (3) the United States Government was obligated to provide protection to certain of the passengers while traveling in the United States.²

6. Section 302.311 of the Department's Rules of Practice provide that the Department may act on an emergency exemption application immediately, and § 302.311(b)(2) allows for oral requests and approvals, which must be confirmed by written application within three business days of the original request. The Department found that Comlux Aruba's request made on September 22, 2021 met these emergency exemption requirements, and this application fulfills the confirming written application requirement.

² A nearly identical rationale offered by the Department in the Qantas matter applies here: "The revenue passengers to be carried as cabotage traffic are United States Secret Service Agents assigned to protect a visiting head of state who has chosen to travel on a foreign airline. The transportation of the Agents is required in the public interest. We view the carriage on a commercial airline of a visiting foreign government dignitary, for whom the United States Government is obligated to provide security, as constituting unusual circumstances not arising in the normal course of business, and we believe that it would be inappropriate for the U.S. Government to ask the President of Fiji to alter his plans by traveling on a U.S. airline. We also find that the requested authority is necessary to avoid undue hardship to all parties involved, and that denial could compromise Secret Service security efforts." DOT Order 93-8-40 at 2-3.

WHEREFORE, for the foregoing reasons, Comlux Aruba respectfully confirms its emergency exemption application and approval pursuant to 49 U.S.C. § 40109(g) for the domestic carriage of two passengers from Washington, Dulles to New York, New York, as described herein.

Respectfully submitted,



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