



**Order 97-8-8**  
**Served: August 11, 1997**

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

Issued by the Department of Transportation  
on the 9<sup>th</sup> day of July, 1997

Application of

**CONDOR FLUGDIENST GMBH**

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

Docket OST-96-1976

**ORDER ISSUING AMENDED FOREIGN AIR CARRIER PERMIT**

**Summary**

This order issues an amended foreign air carrier permit to Condor Flugdienst GmbH authorizing it to engage in scheduled and charter foreign air transportation of persons, property and mail between the Federal Republic of Germany and the United States pursuant to the bilateral aviation undertakings of the United States and Germany.

**Application**

By application filed November 20, 1996, Condor requests that we issue it an amended foreign air carrier permit to conduct services between Germany and the United States consistent with the provisions of the open-skies aviation agreement between the United States and the Federal Republic of Germany (Germany).<sup>1</sup>

Condor states that it has been designated by the Government of Germany to perform the proposed services; it is substantially owned and effectively controlled by citizens of Germany; and it is operationally and financially fit to perform the proposed services

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<sup>1</sup> Condor's existing foreign air carrier permit, issued by Order 80-12-29, authorizes Condor to engage in charter foreign air transportation of persons and accompanying baggage between Germany and the United States; and to perform charters subject to 14 CFR Part 212. Condor also holds exemption authority granted October 21, 1996, for a period of two years, to conduct scheduled combination services consistent with the provisions of the open-skies aviation agreement between the United States and Germany. See Order 96-11-29, Docket OST-95-728.

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

## **Decision**

We have reviewed the record in this case, which is summarized in the attachment to this order, and have decided to grant the application using simplified Subpart Q procedures.<sup>2</sup> The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.<sup>3</sup> The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case, because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Condor is qualified to conduct the proposed operations.

## **Public Interest Considerations**

On February 29, 1996, the United States and Germany concluded a Protocol which amended the 1955 U.S.-Germany Air Transport Agreement (the Agreement).<sup>4</sup> The new agreement, which incorporated all of the basic elements of an open-skies agreement, provides broad rights and other opportunities for the designated carriers of each side.

## **Operational and Financial Fitness**

We find that Condor is operationally and financially fit to conduct the operations at issue here. Condor is organized under the laws of Germany. Condor was issued an initial foreign air carrier permit by the former Civil Aeronautics Board on September 9, 1967, authorizing Condor to engage in charter foreign air transportation of persons and accompanying baggage between Germany and the United States. Condor has held U.S. operating authority on a continuous basis since that time.<sup>5</sup> Condor also holds Department exemption authority to conduct scheduled services consistent with the open-skies provisions of the Agreement.<sup>6</sup>

Condor has experienced management and has had no safety violations, fatal accidents or tariff violations in the last five years. Condor has been designated by its government and

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<sup>2</sup> 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.

<sup>3</sup> 61 FR (64188-89), December 3, 1996.

<sup>4</sup> The Protocol amending the Air Transport Agreement of July 7, 1955, was entered into force on May 23, 1996.

<sup>5</sup> See Orders 80-12-29, 77-1-71 and 73-5-53.

<sup>6</sup> Order 96-11-29.

holds effective authority from its homeland to conduct the proposed operations.<sup>7</sup>

Condor has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds. The FAA's Air Transportation Division (AFS-200) has advised us that it knows of no reason why Condor's request for an amended foreign air carrier permit should not be approved.<sup>8</sup>

### **Ownership and Control**

Condor is wholly-owned subsidiary of Lufthansa German Airlines.<sup>9</sup> In addition, all of Condor's officers, directors and key management personnel are citizens of Germany.

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

1. It is in the public interest to issue Condor Flugdienst GmbH an amended foreign air carrier permit in the form attached;
2. Condor Flugdienst GmbH is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in §313.4(a)(1) of our Regulations;<sup>10</sup> and
5. The public interest does not require an oral evidentiary hearing on the application.

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<sup>7</sup> Condor was issued a Declaration of Competency by Germany's Minister of Transport, Civil Aviation Department, on May 3, 1994. By Diplomatic note (Verbal Note No. 71/96) dated October 2, 1996, the Government of Germany designated Condor to engage in scheduled combination services between Germany and the United States consistent with the Agreement.

<sup>8</sup> A copy of the FAA's May 22, 1997, memorandum has been placed in Docket OST-96-1976.

<sup>9</sup> Condor states that the Government of Germany owns 35.7 % of Lufthansa's outstanding shares, with the remainder publicly held, or held by German institutions. We have previously found that Lufthansa is substantially owned and effectively controlled by German nationals. See Order 86-7-37.

<sup>10</sup> This finding is based on the fact that the grant of this permit will not result in a near-term increase in fuel consumption in excess of 10 million gallons.

**ACCORDINGLY,**

1. We issue, in the form attached, an amended foreign air carrier permit to Condor Flugdienst GmbH authorizing it to engage in scheduled foreign air transportation of persons, property and mail from points behind Germany via Germany and intermediate points to a point or points in the United States and beyond;
2. Condor Flugdienst GmbH is also authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters;
3. The exercise of the privileges granted above is subject to Condor Flugdienst GmbH's compliance with the conditions listed in Attachment A;
4. To the extent not granted, we deny all requests for relief in Docket OST-96-1976;
5. Unless disapproved by the President of the United States under §41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for §41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;<sup>11</sup> and
6. We will serve a copy of this order on Condor Flugdienst GmbH; the Ambassador of the Federal Republic of Germany in the United States; the Department of State (Office of Aviation Negotiations) and the Federal Aviation Administration (New York IFO).

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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<sup>11</sup> This order was submitted for §41307 review on July 9, 1997. On August 5, 1997, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

**SUMMARY****FOREIGN AIR CARRIER PERMIT APPLICATION**  
**Docket OST-96-1976****Condor Flugdienst GmbH**

**Flag:** The Federal Republic of Germany

**Federal Register Notice:** 61 FR (64188-89), December 3, 1996

**Filing Date:** November 20, 1996

**Authority Sought:** Amended foreign air carrier permit to engage in scheduled and charter foreign air transportation of persons, property and mail consistent with the provisions of the open-skies aviation agreement between the United States and the Federal Republic of Germany.

**Pleadings:** No answers were filed in response to Condor's application.

**Public Interest:** During February 1996, the United States and the Federal Republic of Germany concluded a Protocol amending the 1955 U.S.-Germany Air Transport Agreement which incorporated all of the basic elements of an open-skies agreement (the Agreement). The Protocol was entered into force on May 23, 1996. See February 29, 1996, Protocol between the United States and the Federal Republic of Germany, which amended the July 7, 1955, Air Transport Agreement.

**Fitness:** Condor is organized under the laws of Germany and is wholly-owned by Lufthansa German Airlines. Condor has held authority to serve the United States for over thirty years. Condor was issued an initial foreign air carrier permit by the former Civil Aeronautics Board on September 9, 1967, authorizing Condor to engage in charter foreign air transportation of persons and accompanying baggage between Germany and the United States. See Order E-26147 (47 CAB 845). Condor's current foreign air carrier permit, issued by Order 80-12-29, authorizes Condor to engage in charter foreign air transportation of persons and accompanying baggage between Germany and the United States; and to perform other passenger charter operations in accordance with Part 212 of our rules. In addition to its charter authority, Condor holds Department exemption authority to conduct scheduled services consistent with the open-skies provisions of the Agreement (see Order 96-11-29).

Condor has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five years. Condor has been designated by its government and holds effective authority from its homeland to conduct the proposed operations.

Condor appears financially sound:

	<b>Financial Indicators</b>	
(\$ billions)	<b><u>1995</u></b>	<b><u>1994</u></b>
year ending December 31		
Total Assets	5.4	5.3
Total Liabilities	2.0	2.2
Owner's Equity	3.4	3.0
Operating Profit or (Loss)	.3	.5

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

**Ownership and Control:** Condor is a wholly-owned subsidiary of Lufthansa German Airlines. (The Government of Germany owns 35.7 % of Lufthansa's outstanding shares, with the remainder publicly held, or held by German institutions.) All of Condor's officers, directors and key management personnel are citizens of Germany.

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

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**PERMIT TO FOREIGN AIR CARRIER**  
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**Condor Flugdienst GmbH**

A Flag Carrier of the Federal Republic of Germany

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of persons, property and mail, as follows:

**From points behind the Federal Republic of Germany via the Federal Republic of Germany and intermediate points to a point or points in the United States and beyond.**

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

In the conduct of charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third country point, provided that such charter traffic is carried on a flight that serves the Federal Republic of Germany for purposes of carrying traffic between the United States and the Federal Republic of Germany.

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

This permit shall be effective on August 5, 1997. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or

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

The Department of Transportation has executed this permit and affixed its seal on

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)



CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

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

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).(41301/40109) 12/96