

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

\_\_\_\_\_)  
Application of )  
 )  
**JetBlue Airways Corporation** )  
 ) Docket OST 99-5616  
For an exemption under 49 U.S.C. §40109 )  
from the provisions of 14 C.F.R. §201.5 )  
(a)(2) )  
\_\_\_\_\_)

**APPLICATION OF JETBLUE AIRWAYS CORPORATION  
FOR AN EXEMPTION**

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**NOTICE:** Any party may file an answer to this application within 15 days of filing.  
A copy of such answer must be served upon the persons listed above and  
on the attached service list.

Submitted December 15, 1999

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**INTRODUCTION**

JetBlue Airways Corporation has been found fit, willing and able to conduct interstate scheduled passenger air transportation by the Department of Transportation (“Department” or “DOT”)<sup>1</sup> and is in the process of completing its certification efforts with the Federal Aviation Administration (“FAA”).

Pursuant to 49 U.S.C. §40109 and the Department’s Rules of Practice, JetBlue Airways Corporation (“JetBlue”) hereby applies for an exemption from the provisions of section 201.5(a)(2) of the Department’s Economic Regulations (14 C.F.R. §201.5(a)(2)) to enable JetBlue to begin accepting payments and issuing tickets on January 5, 2000, for flights that are planned to begin in early February, 2000. Granting this exemption to JetBlue will be in the public’s interest as it will hasten the entry of a new low fare carrier in the New York City market, enhance competition and promote new passenger service options.

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<sup>1</sup> Order 99-8-26, issued August 31, 1999.

JetBlue requests that this exemption be granted no later than December 31, 1999, and that it remain in effect until JetBlue is granted effective certificate authority for its proposed operations.

In support of this exemption application, JetBlue hereby states:

1. On April 30, 1999, JetBlue<sup>2</sup> filed in Docket OST-99-5615 an application for certificate authority to conduct scheduled air transportation of passengers, property and mail. In Order 99-8-26, issued August 31, 1999, the Department concluded that JetBlue is fit, willing and able to engage in interstate scheduled air transportation and awarded it a conditional certificate to provide such transportation services.

2. The Department provided that JetBlue's certificate authority will be made effective after JetBlue submits the following additional documents for review: (a) a copy of JetBlue's operating authority from the FAA; (b) a fully executed copy of OST Form 6410 evidencing liability insurance coverage that meets the requirements of Part 205 of the Department's Economic Regulations; and (c) a statement of the changes that have taken place at JetBlue regarding ownership, key personnel, operating plans, financial posture, or compliance since the date of the Show Cause Order (OST-99-8-12, issued August 13, 1999). See DOT Order 99-8-26 (terms of the certificate are attached to the order).

The FAA has advised JetBlue that it is working towards a certification that will result in JetBlue initiating service during the first weeks of February. (Letter to be submitted upon receipt). The required certificate of insurance has been filed with DOT

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<sup>2</sup> At the time of its initial filing, JetBlue Airways was known as New Air Corporation.

and updates to the carrier's financials and its personnel will be filed immediately after the close of the calendar year.

3. JetBlue has invested a significant amount of resources in anticipation of its start-up of passenger operations in early February, 2000. JetBlue has hired and trained the personnel necessary to implement its service, and it has the requisite operational personnel and plans in place to begin its service. Further, in preparation for advertising and selling tickets for its flights, JetBlue has already: (a) made arrangements to list and sell tickets through the Sabre, Galileo and Worldspan computer reservations systems (b) staffed and initiated training of its reservations center; (c) retained an advertising agency; and (d) hired an in-house marketing staff.

4. It is imperative that JetBlue avoid the pattern experienced by other new entrant carriers, most of whom have subsequently ceased operations, wherein scheduled operations are initiated with relatively low load factors and similarly low revenue per seat mile. Accordingly, JetBlue seeks to begin advance ticket sales for its initial flights and thereby increase the likelihood of financial success for its start-up service.

5. Precedent exists for the Department to grant JetBlue's request for relief from the requirements of 14 C.F.R. §201.5.<sup>3</sup> The Department has granted such relief as is being sought by JetBlue when the following conditions are satisfied:

- a. The carrier has been found fit to provide air transportation.
- b. The carrier is willing to accept conditions that are designed to safeguard customer payments.

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<sup>3</sup> See, e.g., Application of National Airlines, Inc., DOT Order 99-5-11, issued May 25, 1999 (confirmation of oral grant of request for a waiver of pre-operational sales prohibitions of § 201.5); Application of Shuttle America Corp., DOT Order 98-11-15 (conditional exemption from 14 C.F.R. § 201.5 for new interstate scheduled passenger carrier).

- c. The carrier has received operating authority from the FAA or expects to receive such authority within a reasonably short period of time.<sup>4</sup>

6. In this application, JetBlue has demonstrated it satisfies each of these criteria and, thus, the exemption from 14 C.F.R. § 201.5 should be granted. The Department has already found JetBlue fit to provide scheduled air transportation. JetBlue will submit immediately after the first of the year the updated financial and other changes required by Order 99-8-26. Further, as a condition to receiving the exemption, JetBlue, like other prior applicants, is willing to take any reasonable precaution that the Department deems necessary to safeguard customer payments, including:

- a. Advising each customer that JetBlue does not currently possess full authority to operate the services for which the ticket is being issued and will not have such authority until such time as it is issued by the Department.
- b. Advising each customer that he or she may obtain a full refund of the purchased ticket price, without penalty, if the customer requests the refund and cancels his or her reservation before JetBlue commences revenue flight operations.
- c. Placing all ticket sales proceeds into an irrevocable escrow account until JetBlue actually receives its final certification from the Department.

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<sup>4</sup> The Department has recently granted relief from the requirements of § 201.5 when the carrier demonstrated it was likely to receive its FAA authority within six weeks (see DOT Order OST-99-5-11 granting exemption of National Airlines, Inc.).

- d. Accommodating passengers who, in their discretion, decline a refund and elect to have JetBlue find substitute air transportation for them. If passengers elect to receive such substitute air transportation, JetBlue will pay any amount incurred.<sup>5</sup>

7. Granting JetBlue an exemption from § 201.5 would further the public interest by facilitating the introduction of new, low fare, jet service between the largest travel market in the United States, New York City, and up to thirty other cities which currently lack either this type of service, meaningful price competition or both. Most importantly, granting this exemption request will financially protect JetBlue's prospective customer.

For the foregoing reasons, JetBlue Airways Corporation respectfully requests that the Department grant this requested exemption from the provisions of § 201.5(a)(2) of the Department's Economic Regulations, subject to conditions deemed necessary by the Department.

Respectfully submitted,

Jonathan B. Hill  
Counsel for  
JetBlue Airways Corporation

Dated: December 15, 1999

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<sup>5</sup> If substitute air travel is not available, JetBlue will pay 200 percent of the ticket price to the affected passengers as compensation.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Application of JetBlue Airways Corporation for an Exemption was mailed this 15th day of December, 1999 via first-class mail, postage prepaid, on the following:

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