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COPY

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

_____)
 Application of)
)
 Birdy Airlines S.A.)
)
 for Exemption Authority)
 Pursuant to 49 U.S.C. § 40109(c))
 &)
 Statements of Authorization)
 For a Long-Term Wetlease)
 & To Display American Airlines' Code)
 On Flights Operated By Birdy Airlines)
 On A Wet Lease Basis)
 For SN Brussels Airlines)
 _____)

Docket No. OST-03- 14571

2003 FEB 24 A 9:39
DEPT. OF TRANSPORTATION
DOCKETS

APPLICATION OF BIRDY AIRLINES
FOR AN EXEMPTION PURSUANT TO 49 U.S.C. § 40109(c)
& STATEMENTS OF AUTHORIZATION FOR A LONG TERM WETLEASE
& TO DISPLAY AMERICAN AIRLINES' CODE ON FLIGHTS OPERATED BY
BIRDY AIRLINES ON A WETLEASE BASIS FOR SN BRUSSELS AIRLINES

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NOTICE: ANY PERSON WHO WISHES TO SUPPORT OR OPPOSE THIS APPLICATION
MUST FILE AN ANSWER WITH THE DEPARTMENT OF TRANSPORTATION AND SERVE A
COPY ON THE APPLICANT AND ALL OF THE PERSONS SERVED WITH THIS
APPLICATION BY MARCH 10, 2003.

Dated: February 21, 2003

TABLE OF CONTENTS

Title Page	i
Application for Exemption Authority & Statements of Authorization	1
Certificate of Service	15
Exhibit A Proposed Schedule	17
Exhibit B Officers, Directors & Key Management Personnel	19
Exhibit C Greater than 5% Shareholders of Birdy Airlines (Major Shareholders)	21
Exhibit D Certificates of Insurance	23
Exhibit E Operating Authority Issued by the Civil Aviation Authority	41
Exhibit F Summaries of Aviation Experience of Birdy Management	45
Exhibit G Aircraft Fleet	53

**BEFORE THE
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Application of)	Docket No. OST-03-
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for Exemption Authority)	
Pursuant to 49 U.S.C. § 40109(c))	
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**APPLICATION OF BIRDY AIRLINES
FOR AN EXEMPTION PURSUANT TO 49 U.S.C. § 40109(c)
& STATEMENTS OF AUTHORIZATION FOR A LONG TERM WETLEASE
& TO DISPLAY AMERICAN AIRLINES' CODE ON FLIGHTS OPERATED BY
BIRDY AIRLINES ON A WETLEASE BASIS FOR SN BRUSSELS AIRLINES**

Pursuant to 49 U.S.C. § 40109(c) and the Economic Regulations of the Department of Transportation set forth in Subpart B of 14 C.F.R. § 302, Birdy Airlines S.A. ("Birdy") hereby applies for an exemption from 49 U.S.C. § 41301 to the extent necessary to permit Birdy to provide scheduled foreign air transportation of persons, property and mail between a point or points behind Belgium, via Belgium and intermediate points, to a point or points in the United States and beyond. Specifically, Birdy Airlines will operate routes between Belgium and Africa for Delta Air Transport N.V. d/b/a SN Brussels Airlines ("SN Brussels") under a wetlease agreement. Birdy will operate under the SN Brussels (SN) designator code except to the extent it displays the

AA code of American Airlines pursuant to the Joint Application of SN Brussels and American Airlines for a Statement of Authorization to codeshare which will be filed shortly. Birdy Airlines currently does not plan to operate directly to the United States using its own aircraft.

Furthermore, Birdy Airlines requests a Statement of Authorization under 14 C.F.R. § 212.10 for a long-term wet lease of three Airbus 330 aircraft to SN Brussels Airlines for use in SN Brussels' service between Belgium and Africa. Birdy requests this Statement of Authorization to the extent necessary for it to place American Airlines' designator code on wetleased flights operated by Birdy between Brussels and various African points on behalf of SN Brussels pursuant to the AA/SN codeshare agreement and related Joint Application for a Statement of Authorization to codeshare of SN Brussels and American Airlines which will be filed shortly. Birdy Airlines requests that the Statement of Authorization to wet lease remain effective for at least one year and that the Statement of Authorization to allow it to place American's designator code on its flights operated on behalf remain effective indefinitely.

Birdy Airlines is fit, willing, and able to provide the foreign air transportation for which authority is requested and will comply with the Federal Aviation Act of 1958, as amended, and with all regulations promulgated by the Secretary of the Department of Transportation.

In support of this Application, Birdy Airlines states the following:

Request No. 1:

State the name and address of the applicant, the nature of its organization (individual, partnership, corporation, etc.), and, if other than an individual, the name of

the country under the laws of which it is organized and the statutory citation of such laws, if any.

Response:

Birdy Airlines is organized and incorporated under the laws of Belgium. Birdy's registered address is address is Rue de Livourne 13, B1060 Brussels, Belgium and its operational address is Twin Squares, Building Vendome, Cullinganlaan 1b, B1831 Diegem, Belgium.

Request No. 2:

State the name and official address of the government air transport authority of applicant's country of citizenship having regulatory jurisdiction over applicant.

Response:

The Civil Aviation Administration, Ministry of Communications and Infrastructure Belgian Civil Aviation Authority ("BCAA"), located at Communicatie Centrum Noord, 4^e verdieping, Vooruitgangstraat 80, Box 5, B-1030 Brussels, Belgium, has regulatory jurisdiction over Birdy Airlines.

Request No. 3:

Supply the following information regarding the services proposed:

- (1) A complete statement of the authority sought; and
- (2) A description of the services proposed, specifying:
 - (i) The point or points in the United States proposed to be served;
 - (ii) The frequency of service planned at the start of operations, indicating any seasonal variations; whether the service proposed is to be scheduled, nonscheduled or charter; whether the service

would be passenger, or property and mail, or a combination; and
the type of equipment (and configuration) to be used; and

- (iii) A service schedule stating the manner in which the service will be operated (e.g., nonstop or multi-stop, and the identity of proposed intermediate traffic and nontraffic points).

Response:

Birdy Airlines requests exemption authority and a Statement of Authorization to provide scheduled foreign air transportation of persons, property and mail pursuant to 49 U.S.C. § 41301 between a point or points behind Belgium, via Belgium and intermediate points, to a point or points in the United States and beyond. Specifically, Birdy Airlines will operate four combination passenger and cargo flights each week utilizing Airbus 330 aircraft on routes between Belgium and Africa for Delta Air Transport N.V. d/b/a SN Brussels Airlines under a wet lease agreement. A copy of Birdy's flight schedule is contained in Exhibit A.

Birdy Airlines currently does not plan to operate to the U.S. directly using its own aircraft. Birdy seeks exemption authority so that American Airlines may place its designator code on wetleased codeshare flights operated by Birdy on behalf of SN Brussels. American Airlines, SN Brussels and Birdy Airlines propose to commence service on or about April 9, 2003. As stated previously, American Airlines and SN Brussels Airlines will be filing a Joint Application for a Statement of Authorization to Codeshare.

Birdy Airlines requests this authority pursuant to the U.S.-Belgium Air Transport Agreement signed September 5, 1995. This agreement is an Open Skies Agreement

allowing U.S. and Belgian carriers access to all points within the other nation, as well as behind, intermediate and beyond rights.

Request No. 4:

Provide the names, addresses (both residence and business), and citizenship of all Directors, Officers and key management personnel, including the President, Vice Presidents, the Directors or Supervisors of Operations, Maintenance, and Finance, and the chief pilot and chief inspector. Indicate whether any of these persons are related by blood or marriage.

Response:

The business address for all Birdy Airlines' Directors, Officers and key management personnel is Twin Squares, Building Vendome, Culliganlaan 1b, B1831 Diegem, Belgium. The names, titles, and citizenship as well as the residential addresses of Birdy Airlines' Officers, Directors and key management personnel are attached hereto as Exhibit B. Two members of the Board of Directors are related by blood. Messrs. Victor Hasson and Albert Hasson are brothers.

Request No. 5:

Provide the names and citizenship of all persons holding five percent (5%) or more of the capital stock or capital of the applicant. Also indicate the number and percentage of shares of stock or percentage of capital held by each. If five percent or more of the applicant's stock is held by a corporation or partnership, set forth the name and citizenship of each person holding five percent or more of the entire capital stock or capital of that corporation or partnership and the respective interest of each. If any shares are held for the benefit of another person, give the name and citizenship of that person.

Response:

The shareholders holding five (5%) percent or more of the capital stock of Birdy Airlines are listed in Exhibit C.

Request No. 6:

If the applicant is not wholly owned by its homeland government, state whether the applicant (each officer, director, manager, or holder of five percent or more of the capital stock) holds any interest directly or indirectly (through brokers or holding companies) in any of the entities listed below. If no interest is held, so state.

- (1) Any U.S. carrier,
- (2) Any other foreign air carrier,
- (3) Any persons engaged in the business of aeronautics; and
- (4) Any common carrier, or any person whose principal business is the holding of stock in, or control of, any air carrier.

Response:

None of the Directors, Officers, key management or shareholders of Birdy Airlines who own greater than 5% of the company's stock have any direct or indirect interest in any US air carrier, other foreign air carrier, persons engaged in the business of aeronautics, common carriers, or persons whose principle business is the holding of stock in, or control of, any air carrier.

Request No. 7:

Indicate the relationship between the applicant and its homeland government. If the applicant is wholly owned or substantially owned by the government, indicate which governmental department has responsibility for managerial decisions.

Response:

Birdy Airlines is a private corporation and receives no direct operating funds from the Government of Belgium.

Request No. 8:

State whether the applicant's insurance coverage meets or exceeds the liability limits of 14 CFR Part 205. State the name(s) of the insurance carrier(s).

Response:

Birdy Airlines' liability insurance coverage, provided by Marsh Ltd., as brokers, exceeds the minimum requirements of 14 CFR Part 205. Copies of certificates of insurance covering Birdy's operations are attached hereto as Exhibit D.

Request No. 9:

Supply certified evidence, in English, of the applicant's operating authority issued by its government that relates to the operations proposed. The evidence must include a description of the applicant's present authority, the expiration date of this authority, and the manner in which it is expected to be renewed.

Response:

A copy of Birdy Airlines' Air Operators Certificate, issued by the Government of Belgium, is attached hereto as Exhibit E.

Request No. 10:

Summarize the operating history of the applicant. Include the types of transportation services rendered, points served, etc., from the beginning of operations to the present. Also, if the applicant is a new airline (i.e. an airline that began direct air services within the past 12 months), briefly summarize the business experience of each

officer, director and key management personnel, emphasizing any air transportation experience.

Response:

Birdy Airlines was incorporated on February 27, 2002. Victor Hasson and Georges Gutelman created Birdy to operate long haul flights from Belgium to Africa on behalf of SN Brussels Airlines. Birdy received its air operator's certificate on April 25, 2002. Today Birdy employs 45 persons to staff its cockpit crew and 18 persons in flight and ground operations.

As Birdy is a new airline that began direct air services less than 12 months ago, attached as Exhibit F are the resumes of Birdy Airlines' officers, directors and key management personnel, emphasizing the extensive air transportation experience of each.

Request No. 11:

Provide a list of the aircraft owned, leased and operated by the applicant. State each aircraft registration number and the country of registration. If leased, state the address and citizenship of each lessor. Describe any plans for the acquisition or lease of additional aircraft if the present permit application is granted as proposed. If any of the listed aircraft will not be used exclusively by the applicant, explain its proposed use. State whether any aircraft are or will be wet-leased.

Response:

Birdy Airlines currently owns a fleet of three Airbus 330-301 aircraft. A list containing the registration number, country of registration and address and citizenship of each lessor of the aircraft operated by Birdy Airlines is attached as Exhibit G.

Request No. 12:

State where and by whom the maintenance of the aircraft is or will be performed. State whether the applicant's maintenance program complies with the provisions of ICAO Pilots and Airmen Annexes 1, 6 (Part 1) and 7. Also state whether the applicant's home country is a contracting State to the Convention on International Civil Aviation.

Response:

Sabena Technics performs maintenance on all Birdy's aircraft. Maintenance is performed at Hangar 40 in Brussels National Airport, B1930 Zaventem, Belgium. All maintenance work complies with the provisions of ICAO Pilot and Airmen Annexes 1, 6 (Part 1) and 7.

Request No. 13:

Briefly describe any agreements or cooperative working arrangements (e.g., block-space, wet-lease), both oral and written, entered with and between the applicant, or on behalf of the applicant, and any U.S. or foreign air carrier, affecting the proposed services to the United States that are not on file with the Department. If there are no such agreements, so state.

Response:

Birdy Airlines has entered into a wetlease agreement with Belgian carrier SN Brussels Airlines for operation of SN Brussels' flights between Belgium and Africa. SN Brussels and American Airlines separately will be submitting a Joint Application for a Blanket Statement of Authorization to Codeshare. Birdy submits this application so that American Airlines will be allowed to place its designator code on the flights operated by Birdy Airlines from Brussels to various African points under SN Brussels' codeshare agreement with American Airlines.

Request No. 14:

Supply financial data summaries setting forth in U.S. dollars the applicant's profit and loss statements and balance sheets for the 2 most recent available years (calendar or fiscal). These summaries must be accompanied by a statement from the applicant's official responsible for preparation of the summaries that the submissions are complete and accurate. These summaries must include the following data, but need not be more detailed than the financial data summaries published by ICAO:

- (1) The profit and loss summary shall identify:
 - (i) Total air transport operating revenues (separated into three categories: passenger, cargo, and other transport revenues);
 - (ii) Total air transport operating expenses;
 - (iii) Operating result (difference between (i) and (ii));
 - (iv) Non-operating items; and
 - (v) Profit or loss after income taxes.

- (2) The balance sheet summary shall state and identify:
 - (i) Current assets;
 - (ii) Flight equipment (after depreciation);
 - (iii) Other assets;
 - (iv) Total assets (sum of (i) through (iii));
 - (v) Current liabilities;
 - (vi) Other liabilities;
 - (vii) Long-term debt;
 - (viii) Capital stock;

- (ix) Retained earnings (balance including capital surplus); and
- (x) Total liabilities and equity (sum of (v) through (ix)).

Response:

As Birdy Airlines is a new company, it does not have financial statements to supply to the Department.

Request No. 15:

Describe the amount, type and reason for financial assistance received or expected from the applicant's home government, if any.

Response:

The Government of Belgium has not provided financial assistance to Birdy Airlines.

Request No. 16:

Submit an estimate showing the total traffic and the financial results of the proposed services for the first full year of normal operations and the supporting data employed to calculate the financial forecast.

Response:

Birdy Airlines solely operates as a wet lessor to SN Brussels. Accordingly, Birdy's traffic and financial results are based upon the forecasts of SN Brussels Airlines. The wet lease provides for a stipulated price per block hour with a guaranteed minimum each month.

Request No. 17:

If the air transportation proposed is not covered by an air transport agreement, state in narrative form each of the elements of reciprocity or comity relied upon for the

requested authority. If the authority requested is governed by an agreement, state whether the applicant has been formally designated by its homeland government, and, if so, cite the diplomatic note.

Response:

The air transportation proposed herein is governed by the Air Transport Agreement between the Government of the United States of America and the Government of Belgium, signed September 5, 1995.

Request No. 18:

To the extent not described in paragraph (q), state the policy of the applicant's homeland government with respect to U.S. carriers' applications for scheduled and charter authority. Specifically state whether the homeland government grants Fifth Freedom traffic rights to U.S. carriers.

Response:

Pursuant to the Air Transport Agreement between Belgium and the United States, as amended, the Government of Belgium grants U.S. carriers fifth freedom traffic rights.

Request No. 19:

For the preceding 5 years, state whether the applicant has been involved in any safety or tariff violations or any fatal accidents. If so, furnish details.

Response:

Birdy Airlines has not had any fatal accidents, safety or tariff violations in the past five years.

Request No. 20:

Submit 3 completed copies of OST Form 4523 (Waiver of liability limits under the Warsaw Convention).

Response:

Birdy Airlines is not required to submit OST Form 4523 inasmuch as it acts solely as a wet lease operator for SN Brussels Airlines. Birdy Airlines does not conclude any contracts of carriage with individuals traveling on its aircraft.

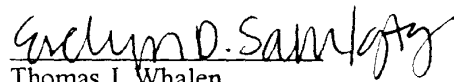
Birdy Airlines is fit, willing and able to perform the foreign air transportation for which authority is requested, to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules and regulations promulgated thereunder. The services proposed herein would provide the benefits of competition for travelers and shippers in the United States and Belgium and are authorized by the United States-Belgium Air Transport Agreement, and, accordingly, approval of the requested authority is in the public interest.

Based on the information provided in this Application and the Exhibits attached hereto, issuance of an exemption will not constitute a "major regulatory action" as provided for in the Energy Policy and Conservation Act of 1975 and 14 CFR Part 313.

WHEREFORE, Birdy Airlines respectfully requests that the Department issue an exemption from the requirement to obtain a foreign air carrier permit under the Federal Aviation Act of 1958, as amended, authorizing it to engage in the foreign air transportation listed above, together with such additional relief as the Department may deem appropriate.

Dated: February 21, 2003

Respectfully submitted,



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Attorneys for Birdy Airlines

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application of Birdy Airlines for Exemption Authority and Statements of Authorization was served via first class mail, postage prepaid this 21st day of February, 2003 on the following:

<p>Marianne M. Myles U.S. Department of State 2201 C Street, N.W., Room 5830 Washington, DC 20520</p>	<p>Nick Sabatini Director of Flight Standards Service Federal Aviation Administration 800 Independence Ave, S.W., Room 821 Washington, DC 20591</p>
<p>Roger Fones Antitrust Division U.S. Department of Justice 325 7th Street, N.W. Suite 500 Washington, DC 20530</p>	<p>National Air Carriers Association Ronald Priddy 910 Seventeenth Street, N.W., Suite 800 Washington, DC 20006</p>
<p>Delta Air Lines Robert E. Cohn Shaw, Pittman 2300 N Street, N.W. Washington, DC 20004</p>	<p>Northwest Airlines Megan Rae Rosia 901 15th Street, N.W., Suite 310 Washington, DC 20005</p>
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Geji T. George