

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Application of :
 :
 VIRGIN AMERICA, INC. : Docket OST-2005-23307
 :
 for a certificate of public convenience :
 and necessity under 49 USC 41102 :
 to engage in interstate air transportation :

**ANSWER OF THE TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
TO VIRGIN AMERICA'S MOTION TO DENY ACCESS OF CONFIDENTIAL
DOCUMENTS TO EDWARD WYTKIND**

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January 17, 2006

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In a Motion dated January 11, 2006 Virgin America asks the Department of Transportation (Department) to deny access of Confidential Materials to Edward Wytkind, President of the Transportation Trades Department, AFL-CIO (TTD). For reasons stated below, allowing Mr. Wytkind access to these materials is necessary for TTD (an interested party in this proceeding) to fully evaluate this application, is not inconsistent with the Department's purpose in issuing Order 2005-12-13, and will not cause Virgin America undue harm. Virgin's motion should therefore be denied.

There should be no debate that TTD has a direct and legitimate interest in fully participating in this proceeding and in evaluating the true ownership and control of

Virgin America. TTD is the transportation umbrella organization for the AFL-CIO, consisting of 29 affiliated unions across all modes of transportation. In the aviation sector alone, TTD member unions represent airline pilots, flight attendants, mechanics, dispatchers, cleaners, ramp workers, customer service agents, airport workers, air traffic controllers, FAA technicians, inspectors, and other related employees.¹ These workers have a vested interest in ensuring that the current foreign control and ownership rules remain intact and followed.

For these reasons, and as Virgin America is well aware, TTD has long taken the position that the current rules limiting foreign ownership and control of U.S. airlines have served our aviation system well and that these rules must be fully enforced. We have also recognized that Sir Richard Branson has long had an interest in changing these rules and starting a U.S. airline using the Virgin brand. In fact, Mr. Branson has specifically stated in the past that the “Virgin brand is so important to us ... we would be reluctant to go ahead unless we could have direct control.” Laurence Zuckerman, *Virgin’s Chief Battling Law on Ownership of U.S. Airlines*, N.Y. Times, June 17, 1998. We have thus taken the specific position that any attempt by Mr. Branson to start a U.S. airline be fully evaluated to ensure compliance with U.S. ownership and control rules. Virgin’s attempt to prevent Mr. Wytkind from having access to confidential exhibits and documents is simply a ploy by the applicant to deny one of its critics from fully participating in this proceeding and has little to do with preventing any potential harm such access would cause.

¹ Specifically, our aviation affiliates are the: Air Line Pilots Association; Association of Flight Attendants-CWA; Communications Workers of America; International Association of Machinists and Aerospace Workers; International Federation of Professional and Technical Engineers; National Air Traffic Controllers Association; Professional Airways Systems Specialists; and the Transport Workers Union of America.

Virgin's Motion does not even specifically cite or explain why allowing Mr. Wytkind access to this information would cause Virgin America harm. It only vaguely refers to past Department cases that recognize that the "risk of undue harm outweighs the asserted need for expanded access to inside experts." TTD is a non-profit labor organization focused on policy and regulatory matters. It does not provide commercial aviation services of any kind and thus is in no way a potential competitor of Virgin America. TTD does not even engage in collective bargaining and is not certified to represent workers under the Railway Labor Act, the National Labor Relations Act (or any other statute), nor has it ever attempted to do so in its history.

While it is correct that Mr. Wytkind is not a lawyer, he is required by his position as President to oversee and direct our policy and regulatory activities and signs off on positions taken by TTD. This would include our ultimate position taken in this proceeding. It is also relevant that given the importance of this proceeding, our aviation affiliates have specifically asked Mr. Wytkind to fully participate in this docket. As explained in TTD's prior Motion in this proceeding (supporting Continental Airlines' Motion) we maintain that the ownership and control issues are not adequately addressed in the application and that further information, including confidential information, is needed to make this determination. It is thus anticipated that it will be necessary for Mr. Wytkind to review the confidential documents or at least be privy to their contents through conversations with counsel. Denying Mr. Wytkind access to this information, as Virgin America proposes, would therefore significantly hamper our ability, as an interested party, to fully and meaningfully participate in this proceeding and offer our views and input.

Mr. Wytkind has filed an affidavit in this proceeding stating that he will “use the confidential information in this docket only for the purposes of participating in this proceeding,” and “will disclose such information only to other persons who have submitted valid confidentiality affidavits...” Mr. Wytkind further declared, under penalty of perjury, that his affidavit was “true and correct.”

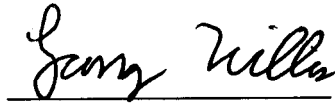
Virgin America appears to base its Motion solely on the fact that Mr. Wytkind is not a lawyer. But as the Department is well aware, bar membership is not otherwise required to represent parties in front of the DOT and to participate in this type of proceeding.² It is inconsistent to allow Mr. Wytkind to participate in this proceeding, but then to deny him access to information that is critical to the fundamental question of who owns and controls Virgin America.

We assume that Virgin America is not suggesting (and in fact it does not allege in its Motion) that Mr. Wytkind would violate his sworn Confidentiality Affidavit. As explained above, TTD does not pose a competitive threat to Virgin. So assuming Mr. Wytkind does not disclose the confidential information, and recognizing that TTD itself is not a potential competitor of Virgin, we simply do not see the potential for “undue harm” that Virgin claims in its Motion. The only harm the applicant would suffer would be that its ownership and control structure could be more fully evaluated and scrutinized by TTD. But of course, this not a valid reason to deny Mr. Wytkind access to confidential information.

² Virgin America itself concedes this point when it notes in its Motion that is “does not object to affidavits filed by aviation specialists and paralegals employed by outside law firms that represent interested will not cause Virgin America undue harm rested parties.”

For these reasons, we respectfully ask the Department to reject Virgin America's Motion and to allow Mr. Wytkind access to Confidential Information.

Respectfully Submitted,

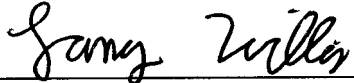
A handwritten signature in cursive script that reads "Larry I. Willis". The signature is written in black ink and is positioned above a horizontal line.

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Certificate of Service

I hereby certify that the copies of the foregoing Answer of the Transportation Trades Department, AFL-CIO has been served upon those listed below.


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