

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: AERO CONTINENTE, S.A.

FAA Order No. 2002-13

Docket No. CP99CE0008
DMS No. FAA-2000-6753¹

Served: May 10, 2002

**ORDER DENYING RESPONDENT'S MOTION TO DISMISS
COMPLAINANT'S APPEAL**²

Respondent Aero Continente, S.A., filed a motion to dismiss Complainant's notice of appeal as untimely. The ALJ served the written initial decision assessing a \$20,000 civil penalty by mail and also sent copies by facsimile to the parties on September 20, 2001. Complainant served its notice of appeal on October 2, 2001, 11 days after the issuance of the ALJ's decision. Aero Continente maintains that the notice of appeal was late under 14 C.F.R. § 13.233(a) because it was not filed within 10 days of the issuance of the initial decision.³ In contending that its appeal was timely,

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: <http://dms.dot.gov>.

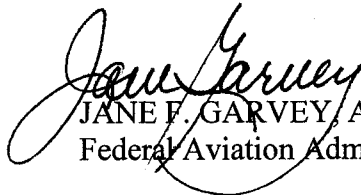
² The Administrator's civil penalty decisions, as well as indexes of the decisions, the Rules of Practice in civil penalty actions, and other information, are available on the Internet at the following address: <http://www.faa.gov/agc/cpwebsite>. In addition, there are two reporters of the decisions: Hawkins' Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. Finally, the decisions are available through LEXIS and Westlaw. Additional information is available on the website.

³ 14 C.F.R. § 13.233(a) provides that "[a] party may appeal the initial decision ... by filing a notice of appeal with the FAA decisionmaker.... A party shall file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and shall serve a copy of the notice of appeal on each party."

Complainant relies on the rules' provision for an additional 5 days to reply to orders served by mail. 14 C.F.R. § 13.211(e).⁴

The question, then, is whether the ALJ's transmission of his decision by facsimile constituted "service of the written initial decision on the parties" within the meaning of § 13.233(a) or whether service was only effected through the mailing of the decision to the parties. The rules provide a ready answer. Section 13.211(f) provides that the "administrative law judge shall *serve* a copy of each document . . . upon each party to the proceedings *by personal delivery or by mail.*" (Emphases added). The Rules of Practice do not provide for service by facsimile. Thus, while the parties had *notice* of the ALJ's decision by the facsimile transmission, *service* was accomplished by mail. Given the additional five days provided by Section 13.211(e) in the case of service by mail, therefore, Complainant's notice of appeal was timely.

Accordingly, the motion to dismiss Complainant's appeal is denied.


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 7th day of May, 2002.

⁴ 14 C.F.R. § 13.211(e) provides that "[w]hen a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days shall be added to the prescribed period."