

By letter dated 4/19/99, Arrow Air, Inc., filed an answer. Arrow points out that Brazil limits the number of U.S. cargo carriers which may conduct scheduled Brazil services and the number of Brazil-destined cargo charters which U.S. carriers may operate. Also, Arrow notes that if the Department grants all of the current request, it will have authorized ABSA to conduct more Fifth Freedom flights to be operated during 1999 than Third/Fourth Freedom ones. Further, Arrow asserts that if the Department would rigorously apply its doctrines of primary reliance and reciprocity to this and similar cases, that might help move countries such as Ecuador toward acceptance of open-skies regimes. Finally, Arrow notes that, if the applicants were able to establish that the subject flights primarily benefit AECA rather than ABSA, it might not object to a greatly reduced schedule. Absent such showing, however, Arrow urges the Department to deny the pending applications.

By letter dated 4/19/99, Fine Air filed in opposition to the applications. Fine asserts that neither application is supported by adequate reciprocity in that both Brazil and Ecuador have restricted regimes for U.S. carriers and, moreover, that ABSA's primary reliance for its U.S. charters appears to be on Fifth Freedom rather than Third/Fourth Freedom operations.

By letter dated 4/28/99, ABSA argues that the Department should grant its application. ABSA claims that it does not have a primary reliance problem because the pending charter program should be viewed as being AECA's program, rather than as an ABSA Fifth Freedom one. Also, ABSA notes that the Department has acted favorably on its earlier requests (which were unopposed) to operate this program since September 1998, and asserts that nothing has changed since then that would warrant unfavorable action on the instant requests. Further, ABSA notes that because AECA's homeland is an FAA Category II country, that carrier cannot operate this U.S. charter program on its own behalf.

By letter dated 5/4/99, AECA urges the Department to grant the two applications, noting that it must seek other-carrier lift to operate its U.S. charter programs, and that U.S. airlines out carry Ecuadorian carriers in the U.S.-Ecuador market.

On May 19, 1999, Advance Petroleum, Inc. filed an objection to the ABSA and AECA applications, urging the Department to deny the applications. Advance Petroleum asserts that AECA has not paid it money that it owes and that AECA is not authorized to do business in Florida or California. Further, Advance Petroleum notes that the United States does not have an open-skies regime with either Brazil or Ecuador.

By facsimile of May 24, 1999, AECA filed a reply to Advance Petroleum's objection, asserting that we should not accept the late-filed pleading; noting that the debt question is a commercial dispute; and disputing Advance Petroleum's claim that it is not authorized to do business in the United States.

We are granting the two carriers authority under Part 212 to conduct this wet-lease operation for a period of 60 days (that is, through August 1, 1999) and deferring action on the remainder of the two applications (that is, to continue this operation beyond August 1, through October 20, 1999).

With regard to the undue reliance arguments raised by Arrow and Fine, we point out that we have authorized ABSA to perform a substantial number of Third/Fourth Freedom operations over the past several years. Against this background, we do not regard the limited number of Fifth Freedom subservice flights that we have awarded ABSA here as being sufficient to constitute undue reliance.

Concerning Advance Petroleum's position, we view its dispute with AECA as a private commercial matter which should properly be resolved in other fora.

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Finally, we do not see our relationship with Brazil or Ecuador as a basis to withhold our approval. Grant of the authority here will enable AECA to conduct, through the wet-lease, U.S. operations that it could not conduct in its own right given that its homeland is an FAA Category II country. In the absence of evidence in the record of this case that either opposing U.S. carrier has suffered a denial of reciprocity on the part of either Brazil or Ecuador concerning analogous charter operations, we are not inclined to prevent the continuation of the ongoing ABSA-AECA operation.