

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

**U.S.-ECUADOR ALL-CARGO
FREQUENCY ALLOCATION**

Docket No. OST-00-7513

**OBJECTIONS OF
EVERGREEN INTERNATIONAL AIRLINES, INC.
IN RESPONSE TO SHOW CAUSE ORDER**

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October 5, 2000

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Evergreen International Airlines, Inc. (“Evergreen”) hereby submits its objections to the September 25, 2000 Order to Show Cause issued in this proceeding, in which the Department tentatively granted exemption authority and awarded the three weekly U.S.-Ecuador frequencies at issue to Gemini Air Cargo, Inc. (“Gemini”), denying the applications of Evergreen and others. For the reasons set forth below, Evergreen respectfully urges the Department to vacate its decision and award the exemption authority and the three frequencies to Evergreen:

1. In its prior submissions in this proceeding, Evergreen raised a bona fide question, based on information about Gemini and its own prior public statements, as to whether Gemini would provide service to Ecuador in its own right or on behalf of some foreign carrier with which it might have an ACMI arrangement. By its own description, Gemini “specializes in providing contract cargo services for other airlines based on Aircraft, Crew, Maintenance and Insurance” and claims to be the “largest ACMI operator of DC-10-30F aircraft worldwide.” *See* December 13, 1999 Gemini press release and related materials set forth as Attachment 7 to Evergreen’s June 30, 2000 Consolidated Reply in this proceeding. Gemini’s specialization in providing ACMI services was in fact the subject of a September 1, 2000 profile of the company in *Air Transport World*, a copy of which is attached. As that article reports, Gemini is the “world’s second-largest dedicated wet-lease cargo airline operating under” the ACMI concept.

(The largest is Atlas Air, Inc., another applicant in this proceeding, which is identified in the article as a “rival” of Gemini in the ACMI business.) Formed as an aircraft leasing and trading company known as Potomac Financial Group, and headed by an official whose background is aircraft leasing, the article reports that Gemini “quickly turned into a lessor providing freighters to supply additional cargo capacity to carriers around the world under both long- and short-term ACMI contracts.” According to Gemini President William Stockbridge, who is quoted in the article, the growth in outsourcing by cargo airlines “has resulted in a significant opportunity for airlines such as Gemini.” The article reports that Gemini has such contracts with a range of South American and other carriers, including Transportes Aereos Mercantiles Panamericanos (TAMPA); Servicios de Transportes Aereos Fueginos (STAF), Lan Chile Airlines and Swisscargo.

Notwithstanding the serious questions that the ACMI nature of Gemini’s operations raise about whether it, or instead some foreign carrier for which it is providing such services, will in fact operate the U.S.-Ecuador rights that Gemini has now been tentatively awarded, the Department’s Show Cause Order is unfortunately silent on this issue. Evergreen submits that before the Department awards these valuable U.S. carrier rights in this limited entry market, it should require assurances from Gemini that it will in fact provide service as a U.S.-flag carrier in its own name, and not pursuant to ACMI or similar arrangements with another carrier, including a foreign carrier. Absent such assurances, the tentative award to Gemini should be vacated.

Requiring such assurances from Gemini would work to ensure that these valuable Ecuador rights are operated by a U.S. carrier, and are not in effect turned over to a foreign competitor. It would also be consistent with the approach the Department has more recently taken in its September 26, 2000 order inviting applications in Docket OST-2000-7559, *U.S.-*

Brazil All-Cargo Frequencies and Designation, in which the Department has (appropriately) required applicants to state whether their services will be operated in conjunction with a “cooperative arrangement” with any other U.S. or foreign carrier in that limited entry market. The Department should be no less interested in cooperative arrangements that the applicant carriers in this proceeding, including Gemini, may have with respect to Ecuadorian service.

2. The tentative decision suggests that Evergreen’s application was denied due to questions about whether the U.S.-Ecuador bilateral would permit the type of alternating one flight per week/two flights per week operation proposed by Evergreen, and by Atlas. The Department states that it “has no assurance of Ecuadorian willingness” to permit this type of operation and that there is no need to test that willingness given that Gemini’s proposal did not raise similar issues. However, given Gemini’s status as an ACMI specialist, that carrier’s proposal raises a much more serious, and unanswered, issue – will the rights at issue be used by a U.S. carrier?

Evergreen believes that Ecuadorian aviation authorities would accept Evergreen’s service proposal as consistent with the bilateral, and urges the Department to seek such assurances at this time. While we appreciate that the Department might not need to seek such assurances if another applicant offered a better service proposal that does not raise other issues, that is not the case here, as already shown.

3. Further, Gemini’s service proposal is inferior to that set forth by Evergreen.¹ For example, Evergreen is the only applicant prepared to serve the important New York market, in addition to Miami, the sole U.S. point that Gemini’s aircraft would serve. Evergreen thus proposes to provide the only all-cargo service that would be competitive with

¹ The superiority of Evergreen’s service proposal relative to the other applicants in this proceeding is detailed in Evergreen’s prior submissions.

Ecuadoriana, which also serves New York. Evergreen would also provide service, as needed, to Latacunga, a point which is an increasingly important source of air cargo. Gemini does not propose to provide such service.

In addition, Evergreen would offer more per flight capacity to the market – 220,000 pounds with its B-747 aircraft versus the 180,000 pounds claimed by Gemini for its DC-10 aircraft. Evergreen therefore can transport larger payloads and operate with lower unit costs with its aircraft than can Gemini.

For all of these reasons, Evergreen urges the Department to vacate its tentative decision and award the exemption and frequencies at issue to Evergreen.

Respectfully submitted,

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October 5, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of October, 2000 served a copy of the foregoing Objections of Evergreen International Airlines, Inc. In Response to Show Cause Order by facsimile and first-class mail on all persons named on the attached service list and in accordance with the Rules of Practice.

David H. Coburn