

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

)	
Application of)	
)	
FEDERAL EXPRESS CORP.)	Docket OST-00-1196
)	
for grant of an exemption or waiver)	May 31, 2000
pursuant to 49 U.S.C. §40109 (Brazil)	
All-Cargo Frequency Dormancy))	
)	
_____)	

ANSWER OF ATLAS AIR, INC. TO APPLICATION OF
FEDERAL EXPRESS CORP. FOR AN EXEMPTION OR WAIVER

By application dated May 22, 2000, Federal Express Corp. (“FedEx”) is seeking an exemption from, or waiver of, the 90-day dormancy condition applicable to its U.S.-Brazil all-cargo frequency allocation so 5 of its 10 frequencies can lie dormant from now until September 1, 2001. Atlas Air, Inc. (“Atlas”) opposes the request with respect to 2.5 of those 5 frequencies. In support of its position, Atlas states as follows:

1. The U.S.-Brazil Air Transport Services Agreement is one of a dwindling number of U.S. aviation agreements that substantially limit competition. Among other things, the agreement restricts the number of airlines the United States may designate to provide scheduled all-cargo services and the number of weekly roundtrip frequencies that those airlines may provide. FedEx is fortunate to be one of the four designated U.S. airlines and has been awarded 42% of available frequencies.

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2. FedEx has advised the Department that it has reduced its U.S.-Brazil service from 10 to 5 weekly roundtrip wide-body freighter flights because of “insufficient traffic demand.”

Application at 3. It seeks permission to retain the dormant frequencies for over a year^{1/} while making no commitment about when or, indeed, whether it will resume usage.^{1/}

3. The FedEx service reduction alone translates to 20% nonusage of valuable U.S.-Brazil frequencies. Underutilization is compounded by the fact that Kitty Hawk International, Inc. d/b/a American International Airways (“Kitty Hawk”), another airline designated to provide U.S.-Brazil all-cargo service, apparently dropped out of the market in December 1999; its designation is not being used and its 4.5 frequencies already have reverted to the Department.

^{1/} If the FedEx request were granted, the dormancy period would not begin to run until June 1, 2001. By the terms of the dormancy condition, the FedEx frequencies could go unused through the end of August 2001.

^{2/} FedEx “expects to increase its Brazil service to the level of ten roundtrip flights a week at some point during the foreseeable future” but “is unable to make a definitive prediction as to when traffic volumes will warrant a resumption of all five additional frequencies.” Application at 3.

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4. The Kitty Hawk circumstances are described in more detail in a concurrently filed and newly docketed Atlas application seeking, *inter alia*: (1) an exemption to provide U.S.-Brazil scheduled all-cargo services; (2) U.S. designation to provide such services (replacing Kitty Hawk as one of the four designated U.S. airlines); and (3) an award of the 4.5 U.S.-Brazil all-cargo frequencies known to be available for reassignment. As stated there, Atlas has extensive experience serving South America, in general, and Brazil, in particular. Through April in the charter year ending June 30, 2000, it used 295 of our country's 750 U.S.-Brazil charter frequencies. Atlas is eager to enter the U.S.-Brazil market on a scheduled basis and is prepared to do so with B-747-200 freighter aircraft promptly after necessary regulatory approvals are obtained.

5. Atlas wishes to schedule seven roundtrip flights per week to and from Brazil. In addition to being designated and receiving the 4.5 Kitty Hawk frequencies that have reverted to the Department, Atlas therefore needs 2.5 additional frequencies. Those frequencies will become available when the 90-day period in the dormancy condition applicable to the FedEx frequencies has run.^{3/}

6. In these circumstances, it would be contrary to the public interest and U.S. aviation policy to grant the FedEx request in its entirety. Frequencies that Atlas is prepared to put to use immediately should not lie dormant for over a year. In order to ensure maximum utilization of

^{3/} FedEx does not state when its Brazil service reduction was effective. We thus are unable to determine the precise frequency reversion date.

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valuable bilateral rights, an extremely important U.S. policy objective,^{4/} the Department should deny the FedEx request for a dormancy exemption/waiver with respect to the 2.5 frequencies that Atlas wishes to use.

WHEREFORE, Atlas Air, Inc. respectfully urges the Department to deny the Federal Express Corp. frequency dormancy request to the extent that it applies to 2.5 U.S.-Brazil frequencies.

Respectfully submitted,

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May 31, 2000

^{4/} See, e.g., *U.S.-Colombia All-Cargo Services*, Order 98-2-24 at 5; *Application of U.S.-Ecuador All-Cargo Frequencies*, Order 97-7-14 at 4.

CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of May, 2000 served a copy of the foregoing answer upon those persons listed on the attached service list, by first class U.S. mail, postage prepaid.

Russell E. Pommer

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Communications with respect to this document should be served upon:

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