



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on October 10, 2000

NOTICE OF ACTION TAKEN -- DOCKET OST-96-2018

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of Federal Express Corporation filed 08/28/2000 for:

XX Waiver from dormancy condition:

By Order 96-2-17 the Department granted Federal Express exemption authority to provide scheduled all-cargo service in the New York/Memphis-Moscow market and allocated it five weekly all-cargo frequencies for this service. That award was subject to the condition that the frequency allocation would expire automatically and the frequencies would revert to the Department for reallocation if they were not used for a period of 90 days.

By Notice of Action Taken dated January 24, 2000, the Department granted Federal Express a waiver of the 90-day dormancy condition through November 1, 2000. Under the terms of the waiver, the 90-day dormancy period would run from November 1, 2000 forward. Thus, absent a further waiver, the frequencies will revert automatically to the Department on January 30, 2001, unless Federal Express begins service by that date.¹

Federal Express now seeks a further waiver from the dormancy condition for all five of its frequencies until November 1, 2001. Federal Express states that insufficient U.S.-Russia traffic volumes have led it to suspend its services, and that it will resume its U.S.-Russia direct service as soon as traffic conditions warrant.²

No answers to the application were filed.

Applicant rep.: Nathaniel P. Breed, Jr., 202-663-8078 DOT analyst: Michael D. Bodman, 202-366-9667

DISPOSITION

XX Granted.

The waiver from the dormancy condition was effective when taken: October 10, 2000, until November 1, 2001.³

Action taken by: **Paul L. Gretch, Director**
Office of International Aviation

Remarks: The aviation agreement between the United States and the Russian Federation, Annex I (Scheduled Air Services) provides that three designated U.S. carriers may collectively operate 23 weekly round-trip all-cargo frequencies. The Department has previously allocated 16 of these flights as follows: Polar Air Cargo – eight frequencies; Federal Express – five frequencies; and Evergreen International Airlines – three frequencies.⁴ Thus, there are a total of seven frequencies currently unallocated.

¹On November 1, 1999, Federal Express temporarily suspended its direct flight operations serving Moscow.

²By separate Notice in this same docket, we have renewed the U.S.-Russia exemption authority of Federal Express.

³Federal Express' waiver from the dormancy condition is effective until November 1, 2001, or until the date on which Federal Express resumes service with these frequencies, whichever occurs earlier. Once the waiver ceases to be effective, the 90-day dormancy condition applies from that point forward.

⁴See Order 96-2-17.

The Department has granted Federal Express waivers of the dormancy condition since January 24, 2000. The Department's dormancy condition is grounded on the policy that carriers seeking limited-availability authority in Department proceedings exercise that authority, or else that such authority will revert to the Department so that the rights will then be readily available for award to other interested carriers with firm plans to use the rights. While the Department has by its present action further extended until November 1, 2001, the dormancy waiver of Federal Express with respect to the unused service frequencies at issue here, we believe that the grant of dormancy waivers on an ongoing basis could, in the absence of countervailing circumstances, undermine the policy goal on which our dormancy condition rests.⁵ We thus advise Federal Express that, in future circumstances, we may no longer find that the public interest warrants a further extension of this dormancy waiver in the event that Federal Express continues to have no immediate plans to use its frequencies.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; and (2) grant of the waiver was consistent with the public interest. To the extent not granted, we denied all requests in the references Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

⁵See Notices of Action Taken dated September 13, 2000 and March 27, 2000 in Docket OST-97-3178, and Notice of Action Taken dated September 25, 2000 in Docket OST-99-5286.