

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

2004 China Cargo Designation and)
2004/2005 China All-Cargo Frequencies)
_____)

OST-2004-18468

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

Communications with respect to this document should be sent to:

Ed Connolly
Executive Vice President
EVERGREEN INTERNATIONAL
AIRLINES, INC.
3850 Three Mile Lane
McMinnville, Oregon 97128-9496
Tel. (503) 472-0011
Fax (503) 434-4210
ed.connolly@evergreenaviation.com

Glenn P. Wicks
Lisa A. Harig
THE WICKS GROUP, PLLC
1215 17th Street, NW
Sumner Annex, 5th Floor
Washington, DC 20036
Tel. (202) 457-7790
Fax (202) 457-7799
gpwicks@wicks-group.com
lhurig@wicks-group.com

Thomas V. Lydon
Director - Government Affairs
EVERGREEN INTERNATIONAL
AIRLINES, INC.
1401 New York Avenue, NW, Suite 530
Washington, DC 20005-2147
Tel. (202) 638-5500
Fax (202) 638-4593
tom.lydon@evergreenaviation.com

Counsel for EVERGREEN
INTERNATIONAL AIRLINES, INC.

**Service to all addressees by email or fax
requested in this proceeding**

Dated: September 10, 2004

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**OBJECTIONS OF
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Evergreen International Airlines, Inc. (“Evergreen”) hereby objects to the Order to Show Cause tentatively selecting Polar Air Cargo, Inc. (“Polar”) to serve the U.S.-China all-cargo market and allocate to it nine frequencies for its proposed services. Evergreen specifically objects to the Department’s rationale in its selection of Polar Air Cargo, Inc. wherein the Department failed to adequately account for Evergreen’s extensive experience in Asia, and in the China market specifically. Evergreen further objects to the Department’s failure to select a backup carrier, which, based upon the record before the Department, clearly would have been Evergreen.

Evergreen submits the following in support of its objections:

1. Evergreen is a superior choice for the award of the authority. As such, Evergreen urges the Department to reconsider its tentative characterization of the merits of Evergreen’s proposal. First, the Department’s reference to Evergreen’s “lack of demonstrated experience in Asia” is contrary to the record.¹ Evergreen notes again, for the

¹ Interestingly, in the 2001 Hong Kong Fifth-Freedom All-Cargo Frequencies case, the Department cited Evergreen’s experience in the Asian market and Polar’s lack of Asian service as justification for confirming its tentative decision to select Polar for an allocation of

record, that it has operated in the U.S.-China and U.S.-Hong Kong charter markets for over 10 years.² Evergreen's reputation as a reliable charter operator in the U.S.-China market is well-established and will enable Evergreen to build a sustainable scheduled presence in the market.³ Evergreen is the only carrier (other than Polar) to have a physical presence in China markets, with sales offices in Beijing and Hong Kong.⁴ Evergreen's Beijing office is expected to nearly triple in size in the near term (from four employees to 11).⁵ Evergreen is also seeking additional warehouse space in Beijing to supplement its capacity in China.⁶ Further, over the past two years, Evergreen CEO Delford Smith and other senior officers have met with Chinese government officials and companies in China in an effort to increase Evergreen's profile in China, and the positive results of these efforts are clearly demonstrated by the numerous letters of support from freight forwarders in China received by Evergreen and filed in this docket.⁷

frequencies (“Indeed, no one has disputed the tentative findings supporting our selection of Polar, namely...that Northwest, UPS, Federal Express, and Evergreen currently provide service in their proposed transpacific market whereas Polar does not.”). Order 2001-10-15 at 5.

² In fact, between June 2003 and June 2004, Evergreen operated 59 charter flights from Shanghai and Hong Kong to the United States. Application of Evergreen at 4. Additionally, Evergreen operated 13 additional charters between Shanghai and Hong Kong and the U.S. in July, 22 such charters in August and has contracted to provide at least 28 more in September. Thus, Evergreen will operate more than 100 Shanghai/Hong Kong – U.S. charters during the first 9 months of calendar year 2004.

³ Consolidated Answer of Evergreen at 4.

⁴ Application of Evergreen at 4. Evergreen also has an office in Seoul. Application of Evergreen at 4.

⁵ EIA-CR-1 at 1.

⁶ EIA-CR-1 at 1.

⁷ EIA-CR-1 at 1.

Second, the Department's tentative conclusion that Evergreen lacks a network to support its proposed services to China fails to consider the merits of Evergreen's proposal. Evergreen addressed how daily B747 service could be instituted while accounting for both the directional and seasonal nature of the traffic.⁸ Evergreen made the best proposal with respect to attracting general cargo business from two major Chinese markets, and did so without need for a hub. The Department's tentative decision failed to distinguish a hub from actual traffic. When the Department stated that Evergreen lacked a "network," it appeared to presume that a hub means that there will necessarily be more traffic. By that defective rationale, hub carriers should always be given preference over point-to-point carriers solely by virtue of the fact that they are hub carriers. In point of fact, contrary to such rationale, today's aviation environment reflects a trend toward creating networks that do not necessarily rely on a traditional hub methodology. As such, the Department should look closely at the traffic expected to be generated by each proposal as well as the method in which a network is being used. Evergreen's proposal in this instance relied on Evergreen's existing network of offices and contacts, its superior reputation in the market, its blend of routes and services, and its B747 fleet options.

The Department should carefully weigh the fact that Evergreen's proposal offered the chance to tap into two very significant markets. This proposal addressed how Evergreen's service would be both competitive and profitable in light of both directionality and seasonality concerns inherent in the China cargo market.² Evergreen also addressed the

⁸ EIA-CR-1 at 2-3.

² EIA-CR-1 at 2-3.

advantages of its proposed point-to-point service over Polar's hub operations.¹⁰ The Department, therefore, should have evaluated these advantages before reaching its tentative decision.

Third, Evergreen is disappointed that the Department's conclusion that Evergreen "appears principally to be focused on charter operations" is viewed by the Department as undermining Evergreen's ability to be a scheduled operator in China.¹¹ While Evergreen certainly has extensive experience as a charter operator in the China/Hong Kong markets,¹² it is precisely this experience that supports its application. In one sentence, the Department ignores Evergreen's charter experience in China/Hong Kong; in the next sentence, the Department states that Evergreen's charter experience would undermine its ability to be a scheduled operator. The contradictory nature of these statements makes it difficult to rationalize such statements with each other and with the Department's decision.

Contrary to the Department's conclusion, Evergreen does have extensive experience as both a scheduled and charter operator in Asia. That experience has been documented before the Department. Indeed, in 2001, Evergreen maintained a substantial scheduled operation that included 12 weekly flights between the U.S. and Asia, nine weekly intra-Asia flights and 15 weekly Hong Kong flights (such flights originating in Jakarta, Taipei, Singapore and Bangkok).¹³ After the events of September 11, 2001, Evergreen, like many other carriers, was forced to reduce its services. The Department should not now penalize

¹⁰ Consolidated Answer of Evergreen at 3-4; Additional Information of Evergreen at 5.

¹¹ Order 2004-9-4 at 9.

¹² See, Letters of Evergreen to Mr. Paul L. Gretch dated July 8, 2004 and July 13, 2004 regarding Kalitta Air's request for allocation of U.S.-China charter frequencies.

¹³ Brief of Evergreen (filed in docket OST-95-764) at 3.

Evergreen for its ability to respond to adverse market conditions by failing to recognize its historical status as an experienced scheduled and charter operator in the Asia market. Indeed, the Department has always “recognized that airlines must adapt their services to market conditions.”¹⁴

2. The Department has failed to follow recent precedent in awarding a backup authority for an award of limited-entry route authority or frequency allocation. The Department has routinely granted such backup authority and recognized the need to ensure prompt use of available rights.¹⁵

In the case at hand, the Department has failed to offer any rationale for its decision not to allocate backup authority. Instead, it stated without explanation that “in light of the record,” it had tentatively decided not to grant back-up authority. Evergreen recognizes that the record in each decision guides the Department in its determination of whether to grant backup authority, and urges the Department to reconsider its tentative decision in this respect. The Department’s failure to award backup authority creates the real possibility that, in the event that Polar does not begin service within 90 days, there will be no U.S. general cargo carrier in place to begin that service. Indeed, it would appear that the Department is laying the foundation to permit a carrier to seek extensions from the dormancy rules, rather than having a carrier ready to begin that service within the prescribed start-up period. This is particularly troubling in light of Polar’s financial instability as evidenced by the recent

¹⁴ Order 97-4-13 at 10.

¹⁵ Order 2001-10-15 at 7; Order 97-8-3; Order 97-4-13.

bankruptcy of Polar's parent company, and in light of the current market reality in which many airlines face financial challenges.¹⁶

Evergreen finds it odd that the Department would elect to give Polar the unfettered right to delay the institution of its services from the outset of the issuance of this award. If the Department had allocated backup authority, a delay by Polar in commencing its service would have allowed the backup carrier to step in and expeditiously institute service. As it currently stands, the Department appears to be protecting its selection of Polar by not allowing a competitive carrier (such as Evergreen) to institute its proposed services in the event that Polar is unable to meet the 90-day start up provision. Evergreen questions the Department's tentative decision not to apply real start-up deadlines by having a backup selection in place where the rights in question are of such a significant value.

3. Evergreen should have received, at the very least, the backup award in this case. Arrow did not have a plane. Gemini needed nearly twice as many frequencies to provide equivalent service. Only Evergreen and Polar offered viable proposals which accounted for actual market conditions. If Polar does not start services within the next 90 days, Evergreen should be given the opportunity to commence the services it proposes.

Evergreen is disappointed with and concerned by the Department's failure to objectively recognize the viability of Evergreen's proposal. As noted above, the Department has not considered the merits of Evergreen's proposal, nor has it given them due weight in this proceeding. Evergreen's concern is magnified by the Department's failure to award Evergreen backup carrier status, in the face of recent precedent and the undisputed value of the rights in question.

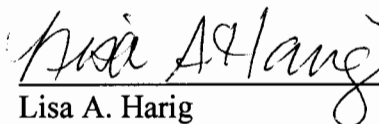
¹⁶ See, Additional Information of Evergreen at 5-8.

WHEREFORE, Evergreen International Airlines, Inc. requests that the Department reconsider its tentative decision, and amend the record as set forth above, and other or further relief as the Department determines to be appropriate and consistent with the public interest.

Respectfully submitted,



Glenn P. Wicks



Lisa A. Harig

THE WICKS GROUP, PLLC
1215 17th Street, NW
Sumner Annex, 5th Floor
Washington, DC 20036
Tel. (202) 457-7790
Fax (202) 457-7799
gpwicks@wicks-group.com
lharig@wicks-group.com

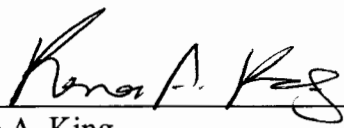
Counsel for EVERGREEN INTERNATIONAL
AIRLINES, INC.

Dated: September 10, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Objections of Evergreen International Airlines, Inc. to order to show cause by electronic mail upon the following:

Megan Rae Rosia	Northwest	megan.rosia@nwa.com
Scott C. Casey	UPS	scasey@ups.com
Daniel Tenfelde	UPS	dtenfelde@ups.com
Ted Lytle	UPS	tlytle@ups.com
David L. Vaughan	UPS	dvaughan@kelleydrye.com
Nancy S. Sparks	Fed Ex	nssparks@fedex.com
G. Bailey Leopard, Jr.	Fed Ex	gbleopard@fedex.com
Moffett B. Roller	Gemini Air Cargo	mroller@rollerbauer.com
Kevin P. Montgomery	Polar Air Cargo	kevin.montgomery@polaraircargo.com
Jeffrey A. Manley	Polar Air Cargo	jeffrey.manley@wilmerhale.com
Cathleen P. Peterson	Polar Air Cargo	cathleen.peterson@wilmerhale.com
Lawrence D. Wasko	Arrow Air	ldwasko@erols.com
Jacquelyn Gluck	Arrow Air	jngluck@erols.com



Renée A. King

Dated: September 10, 2004