

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

_____)	
New Route Opportunities (U.S.-China))	
2004 CARGO DESIGNATION AND)	
2004/2005 ALL-CARGO FREQUENCIES)	Docket OST-2004-18468
_____)	

**ANSWER OF POLAR AIR CARGO, INC.
TO OBJECTIONS TO ORDER TO SHOW CAUSE**

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DATED: September 16, 2004

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Polar Air Cargo, Inc. (“Polar”) respectfully submits this answer to the comments submitted by other applicants in response to the Department’s tentative award of newly available U.S.-China all-cargo authority. Polar would also take this opportunity to express its deep appreciation for the Department’s tentative selection of Polar as the new U.S. carrier to serve China with an allocation of nine weekly frequencies. The tentative decision is consistent with U.S. aviation policy and supports the principal objective of maximizing the public benefits that would result from the award of such authority. It will permit Polar to launch, and the nine frequencies will permit Polar to sustain, the services proposed. Combined, these rights will enable Polar to effect a meaningful and positive competitive change in the U.S.-China and Asia-Pacific all-cargo market. For these reasons, Polar would urge the Department to issue a final order confirming its tentative decision.

Polar would also take this opportunity to thank the Department for acting quickly to render a decision and provide for the start of service using the tentatively awarded rights as soon as possible. In the course of the proceeding Polar had asked the Department to consider issuing temporary exemption authority *sua sponte* in the Order to Show Cause. While the Department was not persuaded then to grant this relief, a current assessment of the time that may be required for the Section 41307 review process might give reason for reconsideration. Should the Department perceive that the Presidential review process could delay a Final Order, Polar would ask the Department to take what further and appropriate action it could to avert a delay in the employment of the new rights during the current peak cargo season pending Presidential review of the Final Order.¹

New Entrants

When instituting this proceeding, the Department noted that the principal objective would be to maximize the public benefits that would result from the authority awarded in this case, in terms of selecting an applicant that would most likely offer and maintain the best service for the shipping public and increase competition in the U.S.-China market and any other market shown to be relevant.² Relying on these and other historically pertinent criteria, and based on the material in the record, the Department tentatively selected Polar, noting that Polar,

“...is the only new carrier applicant in this proceeding with extensive operations and resources in the region (including a hub), the only

¹ One possibility, after the Final Order is adopted by the Department’s decisionmaker, would be to award temporary exemption authority pending completion of the Section 41307 review.

² Order 2004-7-13 at 2.

applicant with demonstrated broad experience in scheduled cargo services in transpacific and intra-Asia markets, and the only applicant that demonstrates it has a road feeder service in the U.S. to provide shippers access to multiple interior points in the U.S.”³

It was due to this distinction that the Department tentatively decided that the selection of Polar, “would provide the greatest public benefits in this case because Polar is in the best position to compete with well-established incumbents in the market and because it would provide significant service benefits.”⁴ The Department also found that by serving China through its Incheon hub and focusing operations on Chicago, New York, Los Angeles and Shanghai, Polar is “more likely to implement services quickly and sustain its proposed services.”⁵

In contrast to the other new entrant applicants, Polar has done much to demonstrate its ability to launch, sustain and increase scheduled transpacific operations not just in the record in this proceeding, but in fact. It has done so in competition with U.S. and foreign air carriers equipped with far more extensive rights, established networks and large regional hubs in Asia. Not one of the other new entrant applicants currently offers scheduled service in the Asia-Pacific region, and the only other carrier that has attempted such service in the past ended that service nearly three years ago.⁶ The submissions in this proceeding, in conjunction with the actual performance of each of the

³ Order 2004-9-4 at 8.

⁴ *Id.* at 8.

⁵ *Id.*

⁶ Arrow acknowledges that it has no scheduled experience in Asia. Arrow Objections at 4. Evergreen ended all scheduled service in 2001. Evergreen Objections at 4. Gemini has never conducted scheduled service in the sense that it sells the capacity of an aircraft on an individually waybilled, common carriage basis, yet it attempts to describe the wet lease operations it conducts for such carriers as Asiana, and whole-plane blocked space arrangements with DHL, as common carriage operations that Gemini itself conducts. Gemini Objections at 5. The “single contracts” Gemini references are none other than these wet leases or block space agreements for the entire capacity of the aircraft.

new entrant applicants, do not lead to any other conclusion except the one reached by the Department in its tentative selection of Polar.⁷

The other new entrant applicants also object to the Department's tentative decision not to award backup authority. Polar takes no position on this issue but would surmise that the Department's determination stems from the recognition that none of these carriers maintains a scheduled service presence in Asia, none has persuasively demonstrated that it could start services promptly, and, therefore, none fits the Department's usual criteria, namely that "having a backup carrier in place for *immediate* implementation of service, should it become necessary, is in the public interest." Order 96-4-48, at 9, *U.S.-Lima Combination Service Proceeding (1996)* (*emphasis added*); see also Order 2002-9-5, at 3, *2002 U.S.-Mexico All-Cargo Exemption Service Case*; Order 92-6-45, at 11, *U.S.-Mirabel All-Cargo Case*.⁸

Arrow

Arrow does not currently operate scheduled, all-cargo services in Asia. Material in the record in this proceeding confirms it has never done so and indicates that it does not have in hand the aircraft to do so. Although given ample opportunity in supplemental filings to respond to numerous issues relating to its service proposal, and several

⁷ The objections submitted by the other new entrant applicants have not demonstrated any error or omission in the decision of the Department, nor do they raise any arguments in their own support that were not already considered and rejected by the Department in the Order to Show Cause.

⁸ In this regard, Polar is also constrained to comment on the somewhat exaggerated comments of Evergreen. Evergreen Objections at 5-6. Evergreen there suggests that the Department, by not selecting a backup carrier, is "laying the foundation to permit a carrier to seek extensions from the dormancy rules, rather than have a carrier ready to begin that service within the prescribed start-up period." Evergreen offers no support for this rather bizarre hypothesis. It is, indeed, ironic that Evergreen, the carrier that caused perhaps the mother of all route case defaults in the sale of its China rights to Fedex, would make such a suggestion. Polar would again reiterate its commitment to employ the new rights promptly, particularly since the first installment of tentatively awarded frequencies is intended for use in the current peak cargo season.

opportunities to refute concerns arising from the uncertainty surrounding the acquisition of such aircraft in time and in sufficient numbers to perform the services proposed, Arrow failed to answer the questions and dispel the concerns raised.⁹ Indeed, the uncertainty regarding aircraft persists in Arrow's Objection to the tentative decision in Arrow's reference to, "a legally binding contract, a wet lease, to utilize a B-747 aircraft"¹⁰, not the two proposed in its initial application.

On the matter of its service proposal, encompassing five cities in the U.S. and five cities in China, Arrow failed to provide market data of any substance or relevance to support this plan. Instead, it relied on a general impression that, "the vast area that is the Republic of China is experiencing expanding economic activity, manufacturing and trade growth at astounding rates of development."¹¹ Arrow also did not present a single argument as to why the scattered service it proposed – with two flights between Xiamen and Houston on the same day each week and with service to the two cities of Guangzhou and Shenzhen that are situated only 48 miles apart – would be competitive with the service of incumbent carriers or superior to Polar's proposed pattern of services. Similarly, Arrow did not respond to the multiple scheduling and operational issues that, in general, undermined the credibility of its service proposal.¹²

⁹ Arrow Application at 4. July 6 Consolidated Answer of Gemini at 2; August 9 Consolidated Reply of Gemini at 10; July 6 Answer of Polar at 8; August 9 Reply Submission of Northwest at 22; July 6 Consolidated Answer of FedEx at 5. Arrow also failed to address the operational impossibility of conducting 13 transpacific flights with only two B-747 aircraft. The Department fully considered these issues and notes in this regard that it is "not persuaded that Arrow has the ability to acquire the equipment that it says it will use on its proposed China service. . . it has not persuasively demonstrated that such equipment would be immediately available, something that takes on particular importance given the expedited nature of this proceeding." Order 2004-9-4 at 9.

¹⁰ Arrow Objection at 3 (emphasis added).

¹¹ Arrow Objection at 4.

¹² August 9 Consolidated Response of Polar at 8-9.

Arrow may have scheduled service experience in the Caribbean, Central and South America, but it lacks actual operating and sales experience in Asia. Its U.S.-China service proposal unfortunately demonstrated its shortcomings, not its experience or strengths. It is fully understandable, therefore, that the Department would conclude that “Arrow’s lack of experience in the Asia scheduled service market and its lack of a scheduled service network would place it at a competitive disadvantage at this time compared to Polar”.¹³

Evergreen

Evergreen objects to the Department’s tentative decision because it believes the Department, “failed to adequately account for Evergreen’s extensive experience in Asia, and in the China market specifically.”¹⁴ Polar disagrees. The Department relied upon the record in this proceeding and Evergreen’s own record in serving Asia-Pacific markets on a scheduled basis, the only meaningful measure of “experience” in this or any other proceeding in which scheduled service rights are at issue. In this regard, the Department accurately accounted for Evergreen’s lack of demonstrated experience in Asia.

By its own admission, Evergreen does not presently offer scheduled all-cargo service in Asia. Evergreen has established in this proceeding that the sum total of its commercial operations in Asia for the year ending June 2004 amounted to 54 one-way Hong Kong-U.S. charters and five one-way Shanghai-U.S. charters.¹⁵ Indeed, Evergreen is not presently conducting scheduled service anywhere in the world. In this light, the

¹³ Order 2004-9-4 at 9.

¹⁴ Evergreen Objection at 1.

¹⁵ Evergreen Objection at 2, fn 2. Evergreen there claims to be conducting additional charters from both Shanghai and Hong Kong without distinguishing between the two, but again, it does not speak of any scheduled service operations.

Department had no other choice but to characterize the focus of Evergreen's operations as charter in nature.¹⁶

Evergreen ended scheduled operations in 2001. While other carriers, such as Polar, restored operations and actually expanded scheduled service between 2001 and the present time, Evergreen showed itself unwilling or incapable of doing the same. While Polar built a scheduled all-cargo network within Asia, and between Asia and Europe, Evergreen instead chose to devote its efforts exclusively to the sale of military and commercial charters.

Although Evergreen claims that it relied upon its "existing network of offices and contacts" in the formulation of its proposal,¹⁷ this is a far cry from the actual, demonstrated experience of operating aircraft on a scheduled basis and linking markets in a manner to create a network for the distribution of cargo between multiple points. Evergreen has recently demonstrated that it can neither initiate nor maintain scheduled service on a point-to-point basis through this "network of offices and contacts"¹⁸, and it has failed to mount a scheduled service network. In all instances, Evergreen has instead shown that it simply cannot be competitive with incumbent air carriers that are offering scheduled services via a hub as well as on a point-to-point basis. In contrast, Polar has succeeded in introducing and maintaining scheduled service on a point-to-point basis in those markets where such service is competitive and sustainable and via a hub when competition warranted it.

¹⁶ Order 2004-9-4 at 9.

¹⁷ Evergreen Objection at 3.

¹⁸ We refer here to three recent instances in which the Department offered to support the avowed intent of Evergreen to re-start scheduled services through an award of limited-entry rights (Hong Kong fifth-freedom, Brazil and Ecuador). In all instances, Evergreen failed to inaugurate the services proposed.

In these circumstances, the Department was fully justified in denying Evergreen's application based on this carrier's "lack of experience in Asia, its lack of a network to support its U.S.-China service, and its relatively limited experience in operating scheduled services generally."¹⁹

Gemini

Gemini offers no arguments the Department has not already considered and rejected, and by focusing again on the issue of capacity, Gemini avoids addressing the key decisional factors that weigh against it. Gemini is a carrier that does not conduct any common carriage, individually air waybilled traffic services but devotes its resources to the conduct of whole-plane charters and wet lease operations for other air carriers.²⁰ It does not compete today in any scheduled service market and, if awarded the rights to China, its entry would be its first foray into the Asia-Pacific market and into this category of service. In short, Gemini did not demonstrate that it had, or would be, capable of instituting or sustaining a common carriage, scheduled service that would be competitive with other carriers in the market.

Gemini objects to the tentative selection of Polar principally on the basis of aircraft capacity. However, it was clearly established in the proceeding that Polar offers more capacity on a per flight basis than Gemini.²¹ Where Gemini has requested 12 weekly frequencies, Polar will provide comparable capacity in the market with an award

¹⁹ Order 2004-9-4 at 9.

²⁰ July 6 Answer of Polar at 11. In an apparent typographical error of some import, Gemini states that Polar operates "many wet lease flights and plane-load charters" in contrast to the "scheduled services operated by Gemini to Asia, Europe and South America". Gemini Objections at 5. Obviously, the references to Polar and Gemini have been reversed. Written correctly, the sentence underscores Polar's point regarding the distinction between the two carriers.

²¹ PO-R-5.

of only nine.²² As the Department concluded, this leaves more frequencies for distribution among the other applicants in this proceeding, an advantage that would be denied by an award to Gemini.²³

Gemini also argues that Polar's services via Incheon will diminish the capacity available to U.S.-China shippers.²⁴ What Gemini will not acknowledge, but what the Department clearly understands, is that operations via Polar's hub in this instance improve the chances of initiating and sustaining service in competition with incumbent carriers that similarly operate via Asia hubs.²⁵ Carriers operate in this fashion in order to compete in third, fourth and fifth freedom markets, achieve a mix of cargo and yields, offer a service to individual customers in multiple markets, and improve the overall economic performance of operations. Polar conducts flights between the U.S. and such countries as Korea, Japan and Taiwan. It, therefore, enjoys an established level of business in each. An added benefit stems from the fact that the bilateral airborne trade with each of these countries is not as severely imbalanced as it is with China.²⁶ Where Gemini would have to operate a near-empty aircraft to China, Polar could support these westbound flights with business from the U.S. to countries throughout the region (served through Incheon) and between these countries themselves. It is this distinction that diminishes the likelihood that Gemini's service could be sustained, particularly when the other carriers serving the market do so with the very same competitive and economic tools enumerated above.²⁷

²² *Id.*

²³ Order 2004-9-4 at 10.

²⁴ Gemini Objections at 3.

²⁵ Order 2004-9-4 at 9, fn. 57.

²⁶ Polar Supplemental Information, PO-2 at 6.

²⁷ As Polar noted, it has the flexibility through its Incheon hub to make additional capacity available on its transpacific services to accommodate U.S.-China traffic up to the full capacity of its flights between

Incumbents

Without disagreeing with the Department's tentative selection of Polar as the new entrant carrier, Northwest objects and FedEx notes its "concern" in reference to the Department's tentative allocation to Polar of nine weekly frequencies. In this, the two largest beneficiaries of past rights in Asia and in China ask that the newest competitor to enter the market be severely disadvantaged. Yet, as the Department reasoned, the allocation of nine frequencies to Polar would "in the face of enhanced competition from the U.S. incumbents...along with substantial competition...from foreign carriers" provide "enough frequencies to introduce, develop, and maintain a workable, competitive operation, while still leaving the bulk of the frequencies for the incumbents to offer new services."²⁸ With a tentative allocation of only nine of 59 frequencies U.S. cargo carriers alone will operate in this market, Polar cannot but agree with the sensibility and fairness of such a decision.

Northwest

Northwest pleads, without credibility, its martyrdom. With its tentative award of six, new all-cargo frequencies, Northwest will hold the most U.S.-China frequencies of any U.S. air carrier, either passenger or all-cargo. Yet, it claims that it is being penalized.²⁹ With its tentative award, Northwest will hold nine all-cargo frequencies, the same number as Polar has been tentatively awarded, but Northwest has chosen to convert one for use in passenger service, an advantage enjoyed by it alone among U.S. all-cargo

Incheon and Shanghai. See August 9, 2004, Consolidated Response of Polar at 5-6 and Polar Supplemental Information, PO-2 at 7.

²⁸ Order 2004-9-4 at 10.

²⁹ Northwest Objection at 2.

carriers. Yet, Northwest claims the Department fails to address its request³⁰ and has allowed Polar, a new entrant, to “leap-frog” over it in terms of frequencies.³¹

In its rhetorical reach for a plausible argument, Northwest fails to address the fundamental public interest justification for the distribution of all-cargo frequencies as tentatively decided, namely, that the new entrant is armed with “enough frequencies to introduce, develop, and maintain a workable, competitive operation”.³² Northwest asks that the Department grant Polar fewer frequencies,³³ but Northwest fails to give even one reason why granting Polar fewer frequencies will either improve Polar’s chances as a new entrant or serve the objectives of the Department to enhance competition significantly in the U.S.-China air cargo market.

However, granting Polar frequencies roughly equal in number to those in the hands of Northwest will help achieve those public policy objectives, particularly in light of Northwest’s incumbency and passenger belly capacity. Such an award will also grant Polar a firm foothold in the market so that it might compete with all other freighter operators in the market and those soon to enter the market. In its tentative decision, the Department has sought to promote competition through a more equitable distribution of rights. Northwest is merely seeking to stifle it.

Polar has tentatively been designated as a new entrant in a market that was until now severely constrained. Only three U.S. all-cargo carriers were serving the market and

³⁰ Northwest Objections at 3. However, the Department specifically notes that, “In awarding Northwest fewer than the 10 frequencies it requested, we were cognizant of Northwest’s ability to carry belly cargo on its scheduled combination services, as well as to convert some combination frequencies to all-cargo frequencies.” Order 2004-9-4 at 11. Of note is the fact that the right to convert frequencies in this fashion was negotiated exclusively for Northwest in response to heavy lobbying on that carrier’s part and at some cost to additional rights that may have been obtained for the benefit of other U.S. carriers.

³¹ Northwest Objections at 6.

³² Order 2004-9-4 at 10.

³³ Northwest Objections at 5.

between them only 20 frequencies were operated. It was in this context that UPS was awarded six weekly frequencies. Upon the conclusion of this proceeding, the all-cargo frequencies in the hands of U.S. carriers will nearly triple to a total of 59. However, this does not account for the additional frequencies permitted Chinese all-cargo carriers and third-country carriers that have recently seen an increase in rights.

As recognized by the Department, nine frequencies in the service pattern proposed by Polar will permit a defensible level of service in view of the current market situation.³⁴ Unlike Northwest, Polar has been restricted to only six frequencies in the Japan market and knows the competitive disadvantages so severe a limitation imposes, particularly when the major participants in the market, such as Northwest, are not similarly constrained. Nine frequencies will permit Polar to do as it proposes: offer service at a level of capacity and on the days of the week required to compete as a new entrant in this market.

Northwest has no cause for complaint about its lack of capacity to serve China when it has the largest allocation of any U.S. air carrier and has more flexibility in how it can use its frequencies. The complaint should be against Northwest for the inefficient use of the advantages presented by that allocation and unique operational flexibility. The conversion of one all-cargo frequency to passenger was a choice that Northwest itself made. Similarly, the choice to operate a passenger B757 with less belly capacity than the B747 aircraft Northwest previously operated between Tokyo and points in China was entirely in the hands of Northwest.³⁵ Although Northwest continues to downplay the

³⁴ Order 2004-9-4 at 10.

³⁵ Northwest has proposed service to Guangzhou with a B757 passenger aircraft and previously operated service to both Shanghai and Beijing with B757 or A320 aircraft. Northwest Objections at 3; September 10, 2004, Northwest Information Response in Docket OST-2004-19077.

benefits of belly capacity, this is added cargo capacity and is the means that certain companies, such as FedEx, UPS and DHL, use to provide much of their service in numerous markets.

What Northwest would prefer the Department and all other applicants overlook is the advantage that Northwest enjoys through this flexibility and added capacity to respond as it wishes to market fluctuations in either the all-cargo or passenger market through the conversion of frequencies or the up-sizing of aircraft. In this regard, Northwest is an undisputed winner, enjoys a competitive advantage over every other applicant and has no rational basis to poor mouth its China allocations. For these reasons, the Department's evaluation and rejection of Northwest's full frequency request is both well-considered and fair.

FedEx and UPS

Although FedEx does not term its submission an "objection", it uses it as a vehicle to voice its displeasure with the Department's decision to tentatively award Polar, as a new entrant, nine weekly frequencies in contrast to the 23 FedEx will hold. It also uses its submission as an attempt to bias the next frequency allocation proceeding.³⁶ UPS makes the same attempt.³⁷

In regard to the first matter, FedEx offers nothing compelling or new as to why Polar should be awarded any fewer than nine frequencies. The tentative decision reflected the Department's recognition of the importance of general freight services that include an express product, the abilities of Polar to employ the rights, and the need to

³⁶ FedEx Reply to Show Cause Order at 6.

³⁷ UPS Response to Show Cause Order at 2.

provide Polar a meaningful number of frequencies to compete with such carriers as FedEx that have far more. Like Northwest, FedEx offers no explanation as to why fewer frequencies will improve the competitive position of Polar or serve any other public policy consideration.

In regard to the second matter, the Department noted that Polar proposes operations via a hub, similar to the market incumbents, and that Polar would also tie China into a global network of services.³⁸ The Department additionally acknowledged that Polar will carry both general and express cargo.³⁹ What the Department can accomplish through this and future awards is the strengthening of not only FedEx's global network, but the competing all-cargo networks that other U.S. carriers such as Polar are building.⁴⁰ In this way, the Department will truly be promoting new service options for shippers in the U.S., in China and around the world. The next carrier selection and frequency allocation proceeding will provide that opportunity.

The general freight services offered by Polar, similar to those offered by Northwest to DHL, also provide for the express service segment of the market by serving express cargo shippers or express service providers that compete with FedEx and UPS. The Department sought to balance as well as possible the competing interests of the cargo carriers and express service providers and satisfy both the general freight and express service sectors of the market.⁴¹ However, the Department did not conclude, as UPS would prefer,⁴² that six frequencies were an absolute minimum that any express service

³⁸ Order 2004-9-4 at 8.

³⁹ Order 2004-9-4 at 4.

⁴⁰ Polar today provides service between its hubs and regional road feeder networks in the U.S., Asia and Europe. China will be integrated into this network.

⁴¹ Order 2004-9-4 at 11.

⁴² UPS Response to Show Cause Order at 2.

provider should receive. The Department noted that, “express services typically require six weekly frequencies to meet the needs of the express cargo shipper”.⁴³ Indeed, FedEx began China service with only four weekly frequencies, UPS admitted in this proceeding that it would “value and operate even a single new frequency”⁴⁴ and both carriers serve a multitude of markets with fewer than six – or, in some instances no – flights.⁴⁵ Six frequencies per week, however, would enable the preferred pattern of service for express service providers such as FedEx and UPS as well as for the express cargo shippers that constitute a growing base of business for such carriers as Polar and Northwest.

Wherefore, Polar respectfully requests the Department issue a Final Order reflecting its tentative decision. Polar further requests that the Department grant such other and further relief as the Department may deem necessary in the public interest.

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⁴³ Order 2004-9-4 at 11.

⁴⁴ Exhibit UPS-100 at 7.

⁴⁵ One might take Australia as an example for UPS, where no more than two flights per week are operated. Or one might consider the entire continent of Africa where service is provided, but not a single flight is operated. Both examples illustrate that six frequencies each week is not required for the operations of an integrated carrier.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Answer of Polar Air Cargo, Inc. To Objections To Order To Show Cause by electronic mail upon the following:

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_____/s/ Brenda Gardner_____
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DATED: September 16, 2004