

Posted: October 3, 2002
4:30 p.m.

Order 2002-10-4



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

Issued by the Department of Transportation
on the 3rd day of October, 2002

Served: October 3, 2002

2002 U.S.-MEXICO ALL-CARGO EXEMPTION SERVICE CASE
Docket OST-2002-13299

ORDER ON MOTION FOR CONFIDENTIAL TREATMENT

By this Order, we dismiss as moot the motion of Express.Net Airlines, LLC (Express.Net) for confidential treatment of its schedule and traffic exhibits filed in the *2002 U.S.-Mexico All-Cargo Exemption Service Case* (Docket OST-2002-13299).

On September 19, 2002, Express.Net filed a motion in this Docket requesting that we withhold from public disclosure, pursuant to Rule 12 of the Department's Rules of Practice, the schedule and traffic exhibits it filed on that date in this proceeding. Express.Net states that it has complied with the terms of Department Order 2002-9-5 to file schedule and traffic forecast data at the application phase of the captioned proceeding and Atlas Air, Inc. (Atlas) did not. Express.Net maintains that, in order to avoid an unfair advantage to Atlas, Express.Net requires confidential treatment for its exhibits until the Atlas application is dismissed for failure to comply with the Department's instituting order in this case.¹

On September 23, 2002, Atlas filed an answer. It states that it does not object to the motion of Express.Net so long as any confidential treatment expires, and the exhibits at issue are provided to the parties to the proceeding, on October 3, 2002, the date that direct exhibits are due under the provisions of Order 2002-9-5. Atlas further states that Order 2002-9-5 left some question as to whether the exhibits at issue were to be filed with applications on September 19 or with direct exhibits on October 3; and that it elected to withhold filing these materials until the latter date.

We will dismiss as moot the motion of Express.Net since Direct Exhibits are to be filed today, October 3, 2002. We shall place Express.Net's exhibits in the public portion of Docket OST-2002-13299.

As an administrative matter, however, we note that while Express.Net's motion is styled as a Rule 12 motion for confidential treatment, in fact, the focus in the motion is not on the nature of the materials, but on preventing prejudice to Express.Net as a result of its filing of them before the filing of similar material by other applicants. The result that Express.Net seeks is to ensure

¹ Express.Net filed a separate motion to dismiss the Atlas application, along with the application of Gemini Air Cargo, Inc., in this proceeding. We denied that motion. See Order 2002-10-3.

that it suffers no harm as a consequence of such prior filing. Express.Net's motion does not contain the justification required by Rule 12 concerning confidential treatment.² We thus view its request as a procedural request designed to ensure fair treatment. Viewing the request in that light, since the issue date of this order is the date set for filing of the Direct Exhibits, we dismiss the motion as moot.

ACCORDINGLY,

1. We dismiss as moot the September 19, 2002, motion of Express.Net Airlines, LLC for confidential treatment of the September 19, 2002, schedule and traffic exhibits it submitted in the *2002 U.S.-Mexico All-Cargo Exemption Service Case* (Docket OST-2002-13299).
2. We will serve this Order on Express.Net Airlines, LLC; Atlas Air Cargo, Inc.; Gemini Air Cargo, Inc.; Capital Cargo International Airlines, Inc.; the Campbell-Hill Aviation Group; the National Air Carrier Association; and the Air Transport Association.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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² 14 C.F.R. 302.12(d)(1).