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Order 2003-3-20



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
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2002 U.S.-MEXICO ALL-CARGO EXEMPTION SERVICE CASE

Docket OST-2002-13299 -- 44

ORDER TO SHOW CAUSE

Summary

By this order, we tentatively select Express.Net Airlines, LLC (Express.Net) for primary authority to serve the U.S.-Mexico scheduled all-cargo market, and Atlas Air, Inc. (Atlas) for backup authority. We will afford interested parties ten calendar days from the service date of this order to file objections, with answers to such objections due seven calendar days thereafter.

Background

Under the U.S.-Mexico aviation agreement, the United States may designate a total of five U.S. carriers to provide scheduled all-cargo services between the United States and Mexico. These carriers may serve any given U.S.-Mexico city-pair market, and there are no frequency limitations. With certain exceptions, however, such services are limited to one U.S. carrier per city-pair route.¹

Currently, four U.S. carriers conduct scheduled all-cargo services in the U.S.-Mexico market—Amerijet International, Inc. (Amerijet), DHL Airways, Inc. (DHL), Federal Express Corporation (Federal Express), and United Parcel Service Co. (UPS). Emery Worldwide Airlines, Inc. (Emery Worldwide) previously held authority as the fifth U.S. carrier, but it ceased all air transportation services in August 2001.² Thus, one U.S. carrier all-cargo designation opportunity is available for U.S.-Mexico all-cargo services.³

By Order 2002-9-5, we instituted the *2002 U.S.-Mexico All-Cargo Exemption Service Case*, in Docket OST-2002-13299, inviting exemption applications from all U.S. carriers interested in serving the U.S.-Mexico all-cargo market. We stated that we intended to select one primary and one backup carrier to provide scheduled foreign air transportation of property and mail between the United States and Mexico. Our order set forth a procedural schedule and a set of evidentiary requirements for the submission of pleadings needed by the Department to make a decision in this case.

¹ Approximately 20 city-pair markets have been approved for double-designation all-cargo services, including the Los Angeles-Guadalajara market and the Miami-Cancun/Guadalajara/Merida/Mexico City markets. One city-pair market (Los Angeles-Mexico City/Toluca) has been approved for triple designation.

² See Order 2002-7-29.

³ Express.Net filed an application to obtain the designation authority forfeited by Emery Worldwide. Atlas filed a competing application.

Market Profile

The United States is Mexico's largest trading partner for both imports (68.4%) and exports (88.4%), and Mexico is the United States' second largest trading partner for both imports (11.5%) and exports (13.9%).⁴ According to the Department's T-100 data, for the twelve months ended December 2001, U.S. carriers transported a total of 490,667,000 pounds of cargo between the United States and Mexico, 253,501,000 pounds transported southbound, and 237,166,000 pounds transported northbound. Using U.S. Department of Commerce Airborne Trade Data, during the period 1996 through 2000, the U.S.-Mexico average annual cargo traffic growth rate was approximately 14.4% northbound, and 23.6% southbound, an average annual growth rate of about 18.8% in both directions. However, in the year 2001, there was a considerable downturn in the market (-19.5% southbound and -29.3% northbound). While events of September 11 likely played a role in this downturn, other general economic and industry conditions also appear to have played a part.

According to the Department's T-100 on-flight origination and destination (O & D) data for the year ended 2001, the top four U.S. gateways for on-flight airfreight to Mexico were: Los Angeles (102,944,024 pounds), Memphis (79,590,792), Miami (70,562,868), and Huntsville (42,552,650). The top four Mexico gateways for on-flight airfreight to the United States were: Mexico City (227,986,950 pounds), Guadalajara (145,002,069), Monterrey (36,578,105), and Toluca (34,029,702). For the same period, U.S. Department of Commerce Airborne Trade Data revealed that the top four U.S. Customs Districts of Exit/Unloading were: Cleveland (25,938,000 pounds), Los Angeles (25,434,000), New Orleans (22,526,000), and Miami (22,186,000).⁵

Applications

Four carriers filed applications for the available designation: Express.Net, Atlas, Capital Cargo International Airlines, Inc. (Capital Cargo), and Gemini Air Cargo, Inc. (Gemini). Gemini subsequently filed a motion to withdraw its application. We will grant the motion here. A summary of the applicants' proposals is attached in Appendix A, and a summary of the applicants' forecasts is attached in Appendix B.

Express.Net proposes to offer both general airfreight and small package/express service (including heavyweight overnight service) between the United States and Mexico via Emery Forwarding's hub at Dayton, using wide-body A-300 (90,000 lbs. capacity) aircraft. Express.Net proposes initially to provide five weekly round-trip flights in the Dayton-El Paso-Chihuahua market (one of those flights would offer service on a Dayton-Dallas/Ft. Worth-El Paso-Chihuahua routing) and five weekly round-trip flights on a Dayton-Monterrey-Guadalajara-Mexico City routing.⁶ Express.Net states that its service will connect through Emery Forwarding's Dayton hub to 47 cities by air and over 50 additional cities via ground service, and to Emery Forwarding's 150 service locations and seven regional hubs (including Charlotte, Chicago, Los Angeles, Nashville, Orlando, and Poughkeepsie).⁷

⁴ Source: CIA World Factbook 2002.

⁵ Exhibit EXN-R-129.

⁶ Express.Net states that it will add five additional Dayton-Mexico City flights by the end of the third quarter of 2003. Express.Net Brief at 4.

⁷ Express.Net states that it does not have an exclusive contract with Emery and that Express.Net currently operates for other shippers and forwarders. Express.Net states that it will make full and effective use of the valuable U.S.-Mexico designation if it is selected and that, in this regard, it intends to serve other forwarders and other U.S.-Mexico routes. Express.Net Brief at 9.

Express.Net states that it will serve Dayton-based manufacturers of automobile parts and supplies that ship their products to vehicle assembly plants (such as Ford, General Motors, and Daimler-Chrysler) throughout North America, including Mexico, and that it will develop international trade opportunities for other Dayton businesses as well. Express.Net states that its proposed El Paso-Mexico service will benefit El Paso's cross-border trade and expand the hub operations at El Paso. Express.Net maintains that El Paso has benefited from the North American Free Trade Agreement (NAFTA) and from the maquiladora factories in Mexico,⁸ and that the Express.Net scheduled services will facilitate the timely flow of parts to the facilities at Chihuahua as well as the return of assembled goods.

Atlas proposes to offer general airfreight service between the United States and Mexico using B-747-200 freighter (234,200 lbs. capacity) aircraft. Atlas proposes initially to provide three weekly flights on a Huntsville-Mexico City-Guadalajara-Miami-Huntsville routing, one weekly flight on a Miami-Huntsville-Mexico City-Guadalajara-Miami-Huntsville routing, and one weekly flight on a Huntsville-Mexico City-Guadalajara-Huntsville-Miami routing. Atlas also proposes to provide two weekly flights on a Los Angeles-Guadalajara-Mexico City-Los Angeles routing, one weekly flight on a Los Angeles-Guadalajara-Manaus-Sao Paulo-Santiago-Guadalajara-Los Angeles routing, and one weekly flight on a Los Angeles-Mexico City-Manaus-Sao Paulo-Santiago-Guadalajara-Los Angeles routing. Atlas states that it will use its hub facilities at Liege, Belgium, and those of its affiliated carrier, Polar Air Cargo, at Miami, Florida, to facilitate air cargo movements between Europe and Latin America, including Mexico (via Miami/Huntsville), and that it will use a new hub facility at Anchorage, Alaska,⁹ for the collection of traffic flowing between Asia and the Americas (via Los Angeles, where Polar currently serves Pacific Rim markets).

Atlas states that, with the exception of the northbound Chile-Los Angeles traffic, which is primarily perishable fish and agricultural products, most of Atlas' traffic will be comprised of industrial products. Atlas states that its service at Huntsville (Atlas' new international air cargo hub for the transatlantic market) will significantly increase competition and expand service options for shippers in the eastern half of the United States, as Huntsville's catchment area includes Alabama and surrounding states, principally to the north and east. Further, Atlas states that it is in the process of establishing a close working relationship with Lineas Aereas Azteca, S.A.de C.V. (Azteca), a Mexican airline that operates passenger aircraft, but lacks all-cargo capacity. Atlas states that Azteca's experience in Mexico will complement Atlas' own sales/marketing experience throughout Latin America.

Capital Cargo proposes to offer predominantly express, time-definite service, and some general cargo service, to the northern industrial belt of Mexico from the industrial Midwest, using B-727-200 freighter (52,500 lbs. capacity) aircraft. Capital Cargo proposes initially to provide five weekly flights on a Toledo-Salttillo-Guadalajara-Monterrey-Toledo routing with frequencies and timing of the flights designed to link to its air freight forwarder partner BAX Global,¹⁰ and other forwarders' services, to the U.S. Midwest sort hub of Toledo. Capital Cargo explains that BAX Global is a multi-modal freight forwarder operating over 500 offices in 123 countries and that, from BAX Global's Toledo hub, BAX Global serves 33 cities

⁸ Product assembly factories in Mexico, mainly located in the border region.

⁹ No opening date given for the new facility. Exhibit Atlas T-1, at 5.

¹⁰ Capital Cargo states that it will operate the scheduled Toledo-Mexico services "pursuant to an ACMI" (aircraft, crew, maintenance, insurance) contract with BAX Global. Application at 3.

by air. Capital Cargo states that, currently BAX Global uses a Mexican carrier to provide scheduled U.S.-Mexico cargo service but that it wishes to provide these services with Capital Cargo instead.¹¹

Capital Cargo states that it will carry U.S. O & D cargo, plus some Canada O & D traffic, and that its fleet is large enough and flexible enough to capture growth through additional frequencies and that, as the market develops, it will increase frequencies and/or increase aircraft size.

Position of the Parties

Each applicant argues that its proposal is the best of those presented and that the other applicant proposals should be rejected. Specifically, Express.Net maintains that its proposal offers the maximum public benefits by providing the most U.S.-Mexico weekly frequencies; serving the most Mexican points; reaching the most U.S. consumers (through its Emery Forwarding network); using the most optimal aircraft; and providing new scheduled all-cargo service at two unserved U.S. gateways. Express.Net also maintains that it has presented evidence to support its argument that it will better serve the needs of U.S.-based shippers and consumers, and that it has the greatest need for the available designation.

Atlas states that the benefits of its proposal exceed those of Express.Net and Capital Cargo under virtually every traditional carrier selection standard; that it will offer far more capacity and will carry far more traffic than either of the other two applicants in this proceeding; that it will add much needed competition and alternative services at the large Miami and Los Angeles gateways; and that it will increase the U.S. flag competitive presence in other international markets, such as Europe-Mexico, and improve utilization of route rights between the United States and other countries, such as Brazil and Chile.

Capital Cargo states that its proposal will best meet the needs of American shippers and is most likely to be flown as proposed. Capital Cargo maintains that its proposal gives the Department the opportunity to select a high quality new entrant for international scheduled U.S.-flag all-cargo service. Capital Cargo claims further that, teamed with BAX Global, Capital Cargo will offer unduplicated express service between the United States and Mexico, and offer the most flexible fleet and operation to allow for expansion. Capital Cargo maintains that, for both marketing and legal reasons, its proposed operations require the scheduled authority at issue in this proceeding.

The applicants raised certain questions regarding the credibility of the other applicant forecasts. Both Express.Net and Capital Cargo claim that Atlas' view of Mexico's economic recovery is not consistent with recent growth patterns, and that there is no basis to expect that the U.S.-Mexico market will experience the double-digit growth between CY 2001 and CY 2003 required to support Atlas' forecasts in this proceeding. Atlas states that it believes that the market will resume its historically rapid growth in 2003, and that it has applied these growth rates in developing its Miami and Los Angeles-Mexico traffic forecasts. Atlas further states that it is the only applicant in this proceeding to fully explain the reasons and basis for its projected growth rates, arguing that both Express.Net and Capital Cargo failed to provide any base year traffic or service data that would permit meaningful analysis of their CY 2003 traffic forecasts.

Capital Cargo states that Express.Net has also projected unrealistically high growth and traffic forecasts in this proceeding and that its services cannot be sustained. Capital Cargo claims that, in this regard, it has

¹¹ Capital Cargo maintains that, in addition to its partnership with BAX Global, it also intends to develop the U.S.-Mexico route using its own resources. In this regard, Capital Cargo explains that it has contacted many forwarders who have expressed an interest in using its services.

found only sluggish growth predictions for the Mexico economy, and believes that it will take 18-24 months for a full economic recovery of U.S.-Mexico air trade post-September 11. In response, Express.Net explains that it has based its forecast on actual historical data from Emery Worldwide records and a reasonable prediction of potential U.S.-Mexico traffic.

Both Express.Net and Capital Cargo claim that Atlas' proposed use of large B-747 aircraft is poorly matched to the needs of the market and will be heavily reliant on 6th freedom traffic, and that its carriage of Asia-Brazil/Chile traffic does not serve the interests of U.S.-Mexico shippers. Atlas argues that its proposed use of B-747 aircraft allows it to offer twice the capacity of Express.Net and eight times the capacity of Capital Cargo, and that Atlas will carry almost twice the traffic of Express.Net and over six times that of Capital Cargo. Atlas maintains that, unlike Express.Net and Capital Cargo, Atlas will promote U.S. international aviation objectives by using Los Angeles-Mexico service as an opportunity to inaugurate U.S. flag service to South America from the U.S. West Coast, and that it will funnel Europe-Mexico traffic from Huntsville. Atlas explains that, even if the Department wishes to narrow its focus to the U.S.-Mexico O & D traffic pool only, Atlas projects that it will carry 30% more of such freight than Express.Net and almost three times that projected by Capital Cargo. Regarding Capital Cargo's proposed aircraft, both Express.Net and Atlas claim that an award to Capital Cargo would not be in the public interest because its proposal of so few flights with narrow-body aircraft on a single routing would not have a significant impact on overall U.S.-Mexico service.

Both Express.Net and Capital Cargo maintain that Atlas does not have the North American infrastructure Express.Net has through Emery's hub at Dayton and Capital Cargo has through BAX Global's hub at Toledo. As a result, Atlas cannot reach as many U.S. customers and, thus, customers may have to arrange on their own to have freight shipped to and from Atlas' gateways. While Atlas acknowledges that a domestic network would be a positive factor in the overall public interest calculus in this proceeding, Atlas maintains that several factors diminish the importance of the domestic network consideration here. In this regard, Atlas argues that Express.Net's Dayton service and Capital Cargo's Toledo service merely duplicate extensive network systems and express-type service already provided by Federal Express, DHL, and UPS, and that selection of Express.Net or Capital Cargo would further concentrate U.S.-Mexico all-cargo service in the Cleveland Customs District, which already accounts for 48% of all-cargo flights to Mexico. Atlas claims that, in contrast, its proposal offers service at Los Angeles and Miami (the first and third largest U.S. generators of air cargo traffic to Mexico and the first and third largest destinations of Mexican-originating air cargo traffic), with the potential to draw additional air cargo traffic from the Los Angeles and Miami catchment areas that is currently shipped via less convenient and more circuitous gateways. Atlas claims, further, that its proposal to serve Huntsville will significantly increase competition and expand service options for shippers in the eastern half of the United States.

Both Express.Net and Capital Cargo claim that Atlas' proposed Los Angeles and Miami gateways are already well-served by combination and all-cargo carriers. Express.Net argues that, in contrast, it will provide new scheduled all-cargo service at two U.S. gateways (Dayton and El Paso) that currently have no scheduled all-cargo and combination service, and at gateways where service was lost when Emery Worldwide ceased air transportation services. Capital Cargo argues that it will offer unique, unduplicated express quality service between industrial centers of the United States and Mexico. Atlas argues that, if the Department selects either Express.Net or Capital Cargo, four of the five U.S.-designated all-cargo carriers would be providing essentially the same type of service from the Midwest and South. Atlas maintains that the public interest is far better served by selecting Atlas, a carrier that will develop services geared to the carriage of general freight through the traditionally large Los Angeles and Miami gateways.

Both Atlas and Capital Cargo claim that Express.Net's proposed El Paso-Chihuahua service (219 miles) is best served by truck; and that there is minimal benefit from the provision of all-cargo service in this short-

haul market. Capital Cargo maintains that Express.Net would use only 8.2% of its A-300 design capacity for this route and that, given the 29% load factor Express.Net presented in its Direct Exhibits in this proceeding, the El Paso-Chihuahua service will not be sustainable. Express.Net argues that it will provide the only scheduled all-cargo service at El Paso, which ranks among the three largest importing/exporting points along the U.S.-Mexico border. Express.Net contends that, while Atlas and Capital Cargo argue that it is a trucking route, Express.Net already successfully operates five weekly El Paso-Chihuahua charter flights and fully expects that demand for El Paso-Chihuahua service will continue. Express.Net argues, further, that proof of the thriving trade between El Paso and Mexico is evidenced by the fact that El Paso recently invested \$60 million in its air cargo infrastructure, developing and building a modern cargo facility on the border.

Express.Net argues that the decisional factor here should be which applicant most needs the designation to operate its proposed service, and that Express.Net is the applicant that has presented the strongest case. Express.Net states that charter operations are only permitted at Mexico City between 11:00 p.m. and 6:00 a.m. (local time) and that Express.Net needs the scheduled carrier designation to operate outside those times, as it is critical to its connections throughout the United States at the Dayton hub and to the overnight carriage of its time-definite traffic. Express.Net argues that, in contrast, Capital Cargo does not propose to serve Mexico City at all and, therefore, can provide its proposed service on a charter basis. Express.Net argues, similarly, that most of Atlas' proposed flights are not scheduled during the restricted Mexico City times and that, to the extent that they are, Atlas can adjust those schedules, as its carriage of general air freight does not have the same time constraints as that of Express.Net. Atlas claims that any of the three applicants can operate substantial charter services to and from Mexico, but that Atlas seeks the scheduled authority to avoid Mexico City's curfew problems and Guadalajara's aircraft parking problems. Atlas argues that both of these problems inhibit Atlas' ability to commence a comprehensive pattern of U.S.-Mexico-3rd country services. Atlas also states that scheduled service is more desirable from a marketing perspective, demonstrating service permanence and regularity to shippers, and facilitating the acceptance of interline shipments, which is difficult on a charter basis because, for any shipment, two separate charter contracts are required. Atlas also argues that, without scheduled authority, it cannot provide the Los Angeles connectivity to Mexico City. Atlas notes that Express.Net's Chihuahua charter services are unconstrained and, thus, Express.Net could continue to operate this service on a charter basis with no material impact on the quality of service. Capital Cargo argues that BAX Global wants to continue scheduled service to Mexico with a U.S. carrier instead of the Mexican carrier it is currently using, and that Capital Cargo has been informed by an official of the Civil Aviation Authority of Mexico that the law requires that U.S. carriers making three or more stops in Mexico (such as Capital Cargo proposes) must first obtain scheduled route authority in their country of origin.

Civic Party/Other Comments

Express.Net

The City of Dayton and the Dayton Area Chamber of Commerce (Dayton Parties), and the City of El Paso filed responses in support of Express.Net's application. In addition, Express.Net provided statements in this proceeding from Emery Forwarding, the Dayton International Airport, and the El Paso International Airport evidencing their support for the Express.Net proposal. Further, Express.Net submitted letters in this case from both the Ford Motor Company and General Motors, Inc., supporting Express.Net's application.

The Dayton Parties state that Express.Net's well-timed, scheduled U.S.-Mexico services at Dayton are essential to the strength of the major cargo hub, and that Express.Net's U.S.-Mexico service will help the Dayton area grow and remain competitive with the competing air cargo hubs that already have scheduled

U.S.-Mexico all-cargo service. The City of El Paso states that scheduled air service to Mexico is a top priority for the city, and that such services are essential to expand commerce and trade opportunities between the two countries.

Emery Forwarding states that its U.S.-Mexico service has been disrupted since Emery Worldwide ceased flight operations and that, while Express.Net has worked diligently with Emery Forwarding to provide U.S.-Mexico charters where it can secure usable slots in Mexico and meet the time constraints required by Emery Forwarding's shippers and the connecting sort at Dayton, Express.Net's charter flights do not represent a viable long-term solution. Emery Forwarding claims that an award to Express.Net is vital to Emery Forwarding's ability to compete effectively with other freight forwarders and express carriers in the market. The Dayton International Airport states that Express.Net's scheduled service is essential not only to the success of the Dayton Airport, but also to the overall commercial development of Dayton businesses and manufacturers. The El Paso International Airport states that it has benefited from the international trade that has been brought about under NAFTA and the maquiladoras, and that new scheduled service in the El Paso-Chihuahua market will facilitate the timely flow of parts to those facilities, and provide for greater flexibility for just-in-time transport of high value goods critical for keeping production lines moving.

Ford states that Express.Net's proposed service will connect Ford's suppliers with Mexico City production facilities, and that Express.Net's A-300s can readily accommodate the heavy freight that Ford traditionally ships overnight to Mexico City. General Motors states that its Silao production facilities are located just outside Guadalajara, and that Express.Net's scheduled flights would provide General Motors with regular, reliable service linking its suppliers with General Motors' Silao facility and its numerous vendors located throughout the United States.

Atlas

Atlas submitted letters in this case from the Huntsville-Madison County Airport Authority (Huntsville), and the Los Angeles World Airports (LAWA), supporting Atlas' application. Huntsville stated that Atlas' proposed services will assist its ongoing efforts to increase the airport's prominence as an air cargo hub and positively contribute to the economic growth of the Tennessee Valley Region. LAWA states that Atlas proposes much needed all-cargo service between Los Angeles and Mexico City and Guadalajara, and beyond to Brazil and Chile; that Atlas' services will increase air cargo capacity and competition in these developed markets and will offer the first U.S. carrier all-cargo scheduled service between Los Angeles, on the one hand, and Brazil and Chile, on the other hand. LAWA explains that, while California is one of the largest states for air exports to Brazil and Chile, very little traffic in the California-Brazil/Chile markets moves via Los Angeles because of the limited availability of direct freighter flights.

Capital Cargo

Capital Cargo provided testimony in this proceeding from Toledo-Lucas County Port Authority (Toledo) and Caribbean Transportation Services, Inc. (CTS), evidencing their support. Toledo states that regularly scheduled service between Toledo and Mexico is very important to the continued growth of the Northwest Ohio economy, the airport, area businesses, and shippers; and that the proposed scheduled services would greatly enhance usage of BAX Global's air and ground distribution network, and make Toledo Express Airport and Northwest Ohio more competitive with other air cargo distribution hubs in the United States. CTS states that, as a major freight forwarder from both the United States and Mexico into the Midwest/Toledo area, Capital Cargo's proposal would offer it and its customers additional new and direct services into this key industrial area.

Tentative Decision

We have tentatively decided to select Express.Net to provide scheduled all-cargo air transportation services in the U.S.-Mexico market. In addition, we have tentatively decided to award backup authority to Atlas.^{12 13}

When we instituted this proceeding, we stated that our primary objective would be to maximize the public benefits that will result from award of the authority. In this regard, we stated that we would consider which applicant would be most likely to offer and maintain the best service for the shipping public. We stated that we would also consider the effect of the applicants' service proposals on the overall competitive environment, including the market structure and level of competition in the U.S.-Mexico/Central/South America markets, and on any other market shown to be relevant. In addition, we stated that we would consider other factors historically used for carrier selection.

Both Express.Net and Atlas propose to provide a significant number of weekly flights, each doing so over two different U.S.-Mexico routings, using large A-300 and B-747 aircraft, respectively. In contrast, Capital Cargo proposes to provide half the number of weekly U.S.-Mexico flights over a single U.S.-Mexico routing, using narrow-body B-727 aircraft. Although Capital Cargo argues that it is the only applicant that has presented a well-measured proposal that is sustainable given the current market circumstances, we tentatively find that this argument is outweighed by the benefits of the Express.Net and Atlas proposals, which we tentatively believe should also be sustainable in the market. The available U.S.-Mexico all-cargo designation opportunity is a valuable operating right obtained through negotiations in exchange for operating rights for Mexican carriers, and the public interest favors maximum use of this limited-entry route right. Given the importance of this authority, we tentatively believe that Capital Cargo's more limited proposal would offer fewer benefits than the proposals of Express.Net and Atlas, as explained below, and, thus, we tentatively conclude that Capital Cargo should not be selected in this proceeding.

With respect to the proposals of Express.Net and Atlas, we note that both would offer near-equal frequencies in the U.S.-Mexico market, and both would offer services to Mexico City (the top Mexico gateway). On balance, however, we tentatively believe that Express.Net's proposal offers the greater overall benefits to the shipping public and that the record supports its selection for the primary award in this proceeding. In this regard, the evidence shows that Express.Net would also serve more Mexico points than Atlas (Express.Net would offer service to Monterrey, Guadalajara, Mexico City, and

¹² With respect to Express.Net, we tentatively find that our action here would not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations. Should Atlas' backup authority be activated, however, we note that such action would constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975. To the extent that Atlas' service would exceed the 10 million gallon provision, we tentatively find that the additional service to be provided under the authority and resulting public benefits as outlined in this tentative decision would outweigh any adverse effects that may be caused by the increased fuel consumption.

¹³ Based on officially noticeable data, we tentatively find that Express.Net and Atlas are fit, willing, and able to provide the proposed services. Atlas has previously been found fit to provide scheduled air transportation of property and mail. (See Order 2001-4-32.) No information has come to our attention that leads us to question the fitness of Atlas to conduct the air transportation operations at issue here. Express.Net has provided information to support a finding of fitness to conduct its proposed operations (see Supplement to Application of Express.Net at 3). We have examined that information and tentatively conclude that the carrier is qualified to provide the proposed all-cargo services at issue here. Capital Cargo failed to provide the fitness information required by our instituting order in this proceeding and, thus, we are unable to determine whether or not the applicant is qualified to provide the services proposed.

Chihuahua, whereas Atlas would serve only Mexico City and Guadalajara); and that Express.Net would offer strong hub service through Emery Forwarding's Dayton hub, whereas Atlas would offer no domestic hub service.

We also tentatively find that Express.Net offers an aircraft/capacity mix that appears well-suited to the specific markets it proposes to serve, and that Express.Net would better meet the needs of a broader spectrum of U.S.-Mexico shippers since it would serve both the general air freight and express freight markets, whereas Atlas would serve only the general air freight market. Further, we tentatively find that, more so than the other applicants, Express.Net needs the scheduled authority at issue in this proceeding (as opposed to relying on its existing charter authority), to be able adequately to address shippers' needs.¹⁴

Of particular significance to our tentative decision is that Express.Net would restore U.S.-Mexico nonstop scheduled all-cargo service at Dayton – a point that enjoyed such service until August 2001 when Emery Worldwide ceased all air transportation operations, but that currently receives no scheduled nonstop all-cargo or combination service to Mexico. We also note that Express.Net would restore dedicated service at El Paso – a point Emery Worldwide also served before it ceased air transportation operations. Atlas, on the other hand, would offer service from U.S. gateways that are already served by both U.S. and Mexico all-cargo and combination air carriers.¹⁵

¹⁴ Atlas and Express.Net each presented arguments to support its position that it is the applicant most in need of the scheduled designation here. We tentatively find the Express.Net argument to be more compelling. In this regard, Atlas states that any of the three applicants can operate substantial charter services to Mexico, but that it seeks the scheduled authority to avoid curfew problems at Mexico City and parking problems at Guadalajara, as well as to build up marketplace viability with service permanence and regularity. Express.Net claims that it needs the scheduled authority to operate outside the charter-only times, stating that it is critical to its connections throughout the United States at the Dayton hub and to the overnight carriage of its time-definite traffic. In examining the record, we found that most of Atlas' proposed services do not involve curfew hours and that, to the extent that they do, Atlas could adjust those schedules more easily, carrying general airfreight, than could Express.Net, carrying express-type products with the need to connect to its domestic network and hub sortation systems. Thus, given the fact that express-type cargo is more sensitive to time-definite service, and the fact that, without the scheduled authority, Express.Net cannot secure the required slots at Mexico City to meet time constraints required by its shippers and the connecting hub at Dayton, we tentatively conclude that Express.Net has presented a stronger case for the scheduled authority at issue here.

¹⁵ As noted above, the Dayton Parties and Emery Forwarding both attest to the need for the replacement services that Express.Net proposes; the City of El Paso and the El Paso International Airport strongly support Express.Net's scheduled all-cargo service in the El Paso-Mexico market where, currently, there is no scheduled service; and the Ford Motor Company and General Motors strongly support Express.Net's proposal, specifically noting the advantages of and the need for the domestic network system Express.Net proposes to offer through Emery Forwarding's hub at Dayton. Ford states that "Express.Net's wide-body A-300 service can readily accommodate the heavy freight that Ford traditionally ships overnight to Mexico City." General Motors states that "Express.Net's widebody A-300 service payload and cubic capacity is well designed to handle the overnight air service of heavy freight that is vital to General Motors' supply chain." (Letter dated October 22, 2003, from Curtis Kitchens, Global Airfreight Manager, Ford Motor Company to the Honorable Norman Y. Mineta; and letter dated October 22, 2003, from Judy Tresise, General Supervisor, Corporate Programs, General Motors, Inc., to the Honorable Norman Y. Mineta, respectively.)

In reaching our tentative decision, we carefully considered the applicants' traffic forecasts in assessing the public benefits to be derived from each carrier's service. While we have seen certain areas of concern with both Express.Net's and Atlas' forecasts, we would not tentatively conclude that the proposals are unattainable. It is, however, our tentative view that Express.Net's proposal better takes into account the current general economic and industry conditions, whereas Atlas' proposal relies on more optimistic growth assumptions that may pose a greater risk that the forecast will not be realized. While we are not projecting lack of growth in the market, we tentatively believe that, given recent events and the current economic conditions in Mexico, Express.Net's more conservative assumptions and forecast are more likely to be attained. We also have tentatively determined that Express.Net's proposal, with its two-prong general airfreight and express service offerings, more fully addresses a broader range of U.S.-Mexico shipper needs. In this regard, Express.Net's more diversified proposal for this market demonstrates a more prudent, conservative approach in the current economic environment, since it does not depend on a single class of traffic to support its service.

We are tentatively unpersuaded by Atlas' arguments that Atlas has the better proposal in this case because Express.Net's A-300 aircraft offers less capacity than Atlas' B-747s (the A-300s with 90,000 pound vs. the B-747s with 234,000 pound payload capacity). Atlas has argued that, in other carrier selection cases such as the Japan and Brazil all-cargo cases,¹⁶ the Department favored the carrier offering service with the largest aircraft. However, Japan and Brazil were frequency-limited markets, whereas the Mexico market is not. Thus, the goal of attaining the greatest available payload per frequency carries significantly less weight here. Atlas also argues that, in a previous Mexico all-cargo case, the Department found that capacity was an important selection factor because the bilateral limitations on the number of U.S. all-cargo carriers had an impact on the overall capacity available.¹⁷ Total capacity, however, is only one of many factors considered in carrier selection proceedings. Atlas has not persuaded us that it should be the determinative factor in this case, especially where Express.Net has presented a proposal that offers a number of other significant advantages.

Atlas has tried to minimize its lack of a domestic network system even though it admits that such a system would be a positive factor in a carrier selection proceeding.¹⁸ In this regard, Atlas argues that its proposed service at the first and third largest U.S. air cargo cities to Mexico (Los Angeles and Miami, respectively) including their catchment areas, will increase competition at these largest airports and in the U.S.-Mexico market, generally. Atlas also stated that its Los Angeles-Mexico-Brazil-Chile services would offer a unique opportunity to combine traffic flows and thus create viable new single-plane service in the currently underserved Los Angeles-South America markets. In our instituting order in this proceeding, we stated that we would consider the market structure and level of competition in the U.S.-Mexico market and in any other market shown to be relevant. In this regard, Atlas' proposal does offer certain benefits that Express.Net's proposal does not. However, such benefits are limited by the fact that the U.S.-Mexico aviation agreement does not provide for the operation of service beyond Mexico with local traffic rights. Under these circumstances, and in view of the other important benefits Express.Net's proposal offers (as outlined above), we tentatively find that the limited Brazil and Chile benefits offered by Atlas' proposal are not decisional in this case. That said, we note that Atlas holds certain certificate and exemption authority to serve between the United States and Brazil, and it holds broad certificate

¹⁶ See the *2000 U.S.-Brazil All-Cargo Service Case* (Order 2001-3-27), and the *1996 U.S.-Japan All-Cargo Service Proceeding* (Order 96-11-28).

¹⁷ See the *U.S.-Mexico All-Cargo Exemption Proceeding* (Docket 50503), Order 95-4-34, at 6.

¹⁸ Atlas Brief at 18.

authority to serve between the United States and Chile, and that the carrier could provide service in these markets without the U.S.-Mexico authority requested here.¹⁹ It is true that Atlas' proposal would promote direct competition at certain airports (competing with UPS and foreign carriers at Los Angeles, and competing with Amerijet and foreign carriers at Miami). However, while we certainly would not dispute the benefits of intragateway competition, we tentatively believe that in the circumstances of this case, those benefits are outweighed by the benefits derived from the intergateway competition under Express.Net's proposal that also replicates operations previously available to shippers at Dayton and El Paso that had since been lost.

Atlas has also argued that its service at Huntsville will significantly increase competition and expand service options for shippers in the eastern half of the United States. However, given the fact that the carrier does not have an established domestic network system, it is unclear how beneficial Huntsville service would be for those shippers. We note, for example, that the Huntsville-Mexico traffic which Atlas projects is predominantly traffic that is transshipped from Huntsville-Europe flights.²⁰

We have also carefully considered the arguments made by Atlas and Capital Cargo regarding their claims that Express.Net's proposed El Paso-Chihuahua market is best served by truck, or that the service is merely a tag-end to the domestic Dayton-El Paso flight. However, we are tentatively not persuaded that it is not a viable air service market. The record in this proceeding shows that El Paso ranks among the three largest importing and exporting cities along the U.S.-Mexico border. In addition, the City of El Paso and El Paso International Airport have stated their strong support for Express.Net's proposal stating that, because of NAFTA and the maquiladora markets, new scheduled air transportation service in the El Paso-Chihuahua market is critical for keeping production lines in the maquiladora enterprises moving. This is further evidenced by the fact that El Paso recently invested \$60 million to develop and build the Butterfield Trail Air Cargo Center. We also note that, while Atlas and Capital Cargo have argued that the 219-mile route segment cannot be sustained, Express.Net states that it would not have continued operating the El Paso-Chihuahua service through the present day (five charter flights weekly), nor would it have substituted larger A-300 aircraft for B-727 aircraft on the route if the service was not profitable.²¹

Terms, Conditions and Limitations

If our tentative selection of Express.Net for the primary award here is made final, we propose to issue Express.Net two-year exemption authority for service in the Dayton/El Paso-Chihuahua and the Dayton-Monterrey/Guadalajara/Mexico City markets. We also propose to issue Atlas contingent exemption authority of one-year's effectiveness for backup service in the Miami/Huntsville-Mexico City/Guadalajara and Los Angeles-Mexico City/Guadalajara and beyond markets. In this regard, we note that it has been the Department's policy to authorize U.S.-Mexico service at points between which a carrier proposes immediate nonstop service to Mexico or one-stop service in Mexico. We also note that the Department has consistently imposed dormancy conditions on such authority, whereby a city-pair market is deemed dormant if no U.S.-flag nonstop service, or no U.S.-flag one-stop service via a Mexican point, is provided, except where service in the market is seasonal. In the instant proceeding, however, each of the applicants has requested authority initially to provide U.S.-Mexico all-cargo service on linear routings rather than on

¹⁹ See Atlas' exemption authority for certain U.S.-Brazil and beyond service – Order 2001-7-13; Atlas' certificate authority for Route 801 for Miami-Brazil service – Order 2001-4-32; Atlas' exemption authority for certain U.S.-Brazil service – Notice of Action Taken dated September 19, 2001, in Docket OST-2001-10400; and Atlas' certificate authority for Route 637 for broad U.S.-Chile service – Order 99-12-7.

²⁰ Exhibit Atlas T-2, at 7.

²¹ Brief of Express.Net at 11.

a nonstop or one-stop city-pair basis. As no party has raised an issue with regard to the type of services offered, particularly in light of the U.S.-Mexico city-pair dormancy provisions normally imposed, we have tentatively decided to waive certain of those dormancy provisions here to allow for the linear services proposed. Accordingly, we propose to issue the subject primary and backup U.S.-Mexico authority on a city-pair basis, imposing the 90-day dormancy condition and dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. However, we will not deem a city-pair market to be dormant if it is being served on a linear basis as proposed, rather than on a nonstop or one-stop basis, so long as the subject city-pair market continues to receive regularly scheduled service.²² We will also impose a startup condition for each award. In this regard, Express.Net stated that it would be prepared to institute service as soon as possible, and Atlas stated that it would be prepared to institute service by December 1, 2002. To allow sufficient time for the selected carrier to inaugurate service, and consistent with our standard practice, we have tentatively decided to require institution of service within 90 days after the service date of a final order in this case.

Backup Award

As we stated in our instituting order, the designation opportunity for U.S.-Mexico all-cargo services here is valuable. Therefore, we tentatively find that it is in the public interest to have a backup carrier in place, if necessary, for immediate implementation of service. In this regard, we have tentatively decided to select Atlas as backup to Express.Net. We tentatively find that the public benefits of Atlas' proposal are greater than those offered by Capital Cargo, especially in light of the fact that Atlas would make greater use of the designation opportunity by providing almost twice as many flights in the market; by using aircraft with greater capacity; by proposing service to Mexico City, the largest Mexico gateway from the United States; and by offering U.S.-Mexico service at more U.S. points, including points from which it would provide new intragateway competition. In addition, as Atlas has experience operating all-cargo charter flights in the U.S.-Mexico market and has previously been found fit to provide foreign scheduled all-cargo services, we tentatively find that Atlas would be in a position to implement service quickly should Express.Net not inaugurate service or discontinue service during the first year of operations. We recognize that, since the United States is limited under the U.S.-Mexico aviation agreement to five all-cargo carriers, the backup authority can be exercised only if the primary carrier completely abandons the Mexico market. In this regard, should Express.Net significantly reduce the U.S.-Mexico service proposed here, we reserve the right to reexamine whether the award continues to be in the public interest.

ACCORDINGLY,

1. We tentatively select Express.Net Airlines, LLC for primary authority to provide U.S.-Mexico all-cargo services between (1) El Paso, Texas, and Chihuahua, Mexico; and (2) Dayton, Ohio, on the one hand, and Monterrey, Guadalajara, and Mexico City, Mexico, on the other hand;
2. We tentatively select Atlas Air, Inc., for authority to provide U.S.-Mexico all-cargo services between (1) Huntsville, Tennessee, on the one hand, and Mexico City and Guadalajara, Mexico, on the other hand; and (2) Los Angeles, California, on the one hand, and Mexico City and Guadalajara, Mexico, on the other hand, should its backup exemption authority become activated;
3. We tentatively deny the application of Capital Cargo International Airlines, Inc., in the *2002 U.S.-Mexico All-Cargo Exemption Service Case* (Docket OST-2002-13299);

²² Having reached this tentative conclusion, however, we put the carriers on notice that, should another carrier apply to serve a city-pair market on a nonstop or one-stop basis, we would have to reconsider whether, in the circumstances presented, award of the more than one-stop authority here continues to be in the public interest.

4. We grant the motion of Gemini Air Cargo, Inc., to withdraw its application for U.S.-Mexico all-cargo exemption authority in the *2002 U.S.-Mexico All-Cargo Exemption Service Case* (Docket OST-2002-13299);
5. We direct any interested parties having objections to our tentative decisions set forth in this order and in ordering paragraphs 1 and 2, above, to file their objections with the Department's Docket Section, Docket OST-2002-13299, U.S. Department of Transportation, 400 Seventh Street, SW Washington, DC 20590, no later than 10 calendar days from the date of service of this order; answers thereto shall be filed no later than 7 calendar days thereafter;²³
6. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;²⁴
7. To the extent not granted, we deny all motions and requests in the captioned dockets; and
8. We will serve this order on the parties to the captioned docket of this order, the Ambassador to Mexico in Washington, DC; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

SUSAN McDERMOTT
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

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

²³ The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, filers are encouraged to use the electronic filing submission capability available through the Dockets/DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site.

²⁴ Since we are providing for the filing of objections to our tentative decision, we will not entertain petitions for reconsideration of this order.

Appendix A

SUMMARY OF APPLICANT PROPOSALS

Applicants	Weekly RTs	Markets	Aircraft	Capacity per flight (lbs.)	Weekly Capacity (ea. direction)	Startup
Express.Net	5	Dayton/El Paso-Chihuahua ¹	A-300-200F	90,000 lbs.	450,000 lbs.	a.s.a.p.
	<u>5</u>	Dayton-Monterrey/Guadalajara/ Mexico City	A-300-200F	90,000 lbs.	<u>450,000 lbs.</u>	a.s.a.p.
TOTAL:	10				900,000 lbs.	
Atlas	5	Miami/Huntsville-Mexico City/ Guadalajara ²	B-747-200F	234,200 lbs.	1,171,000 lbs.	12/1/02
	<u>4</u>	Los Angeles-Mexico City/ Guadalajara ³	B-747-200F	234,200 lbs.	<u>936,800 lbs.</u>	12/1/02
TOTAL:	9				2,107,800 lbs.	
Capital Cargo	5	Toledo-Salttillo/Guadalajara/ Monterrey ⁴	B-727-200F	52,500 lbs.	262,5000 lbs.	1/2003

¹ One weekly roundtrip flight would include the point Dallas/Ft. Worth in its routing, as follows: Dayton-Dallas/Ft. Worth-El Paso-Chihuahua.

² Three weekly flights will operate over a Huntsville-Mexico City-Guadalajara-Miami-Huntsville routing, one will operate over a Miami-Huntsville-Mexico City-Guadalajara-Miami-Huntsville routing, and one will operate over a Huntsville-Mexico City-Guadalajara-Huntsville-Miami routing.

³ Two weekly flights will operate over a Los Angeles-Guadalajara-Mexico City-Los Angeles routing, one will operate over a Los Angeles-Guadalajara-Manaus-Sao Paulo-Santiago-Mexico City-Los Angeles routing, and one will operate over a Los Angeles-Mexico City-Manaus-Sao Paulo-Santiago-Guadalajara-Los Angeles routing.

⁴ Five weekly flights will operate over a Toledo-Salttillo-Guadalajara-Monterrey-Toledo routing.

Appendix B

**SUMMARY OF ALL-CARGO APPLICANT FORECASTS (Lbs.)
2002 U.S.-MEXICO ALL-CARGO EXEMPTION SERVICE CASE
DOCKET OST-2002-13299**

	<u>HSV-MIA- MEX-GDL</u>	<u>Atlas B-747 LAX-MEX- GDL</u>	<u>Total</u>	<u>Capital B-727 TOL-SLW- GDL-MTY</u>	<u>DAY-MTY- GDL-MEX</u>	<u>Express.Net A-300 DAY-ELP- CUU</u>	<u>Total</u>
<u>Southbound</u>							
U.S. Originating Traffic							
U.S.-Mexico	13,143,245	23,308,360	36,451,605	12,148,500	20,173,050	7,080,486	27,253,516
U.S.-Third Country		4,530,282	4,530,282				
Foreign Originating Traffic							
3 rd Country-Mexico	33,282,900	3,000,000	36,282,900				
3 rd Country-3 rd Country		2,000,000	2,000,000				
TOTAL	46,426,145	32,838,642	79,264,787	12,148,500	20,173,050	7,080,466	27,253,516
Other Traffic (U.S.-Domestic)						14,182,243	14,182,243
<u>Northbound</u>							
U.S. Destination Traffic							
Mexico-U.S.	9,462,951	19,514,275	28,977,226	11,861,200	16,769,565	6,188,610	22,958,175
Third Country-U.S.		10,094,440	10,094,440				
Foreign Destination Traffic							
Mexico-3 rd Country	29,531,700	3,000,000	32,531,700				
3 rd Country-3 rd Country		2,000,000	2,000,000				
TOTAL	38,994,651	34,608,715	73,603,366	11,861,200	16,769,565	6,188,610	22,958,175
Other Traffic (U.S.-Domestic)						12,378,652	12,378,652
GRAND TOTALS (Excl. U.S.-Domestic)			152,868,153	24,009,700			50,211,691
Sources:			Atlas-202/203	CC-8			EXN-202/203