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

Issued by the Department of Transportation on December 10, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-2002-14049 - 105

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

Applications of Evergreen International Airlines, Inc. filed 12/02/2003 and of Kalitta Air, LLC filed December 3, 2003, for:

**XX Waiver of Startup Condition:**

Evergreen and Kalitta each seeks a waiver of the startup conditions applied by Order 2003-9-9 in the *2002/2003 Hong Kong Fifth-Freedom All-Cargo Frequency Proceeding* in the above-captioned docket for the inauguration of their proposed services via Seoul, Korea. Under the provisions of the order, Evergreen states that it would have to inaugurate service with one frequency for Seoul service by December 11, 2003, and the second frequency for second-year operations by January 24, 2004, or otherwise lose the frequencies. Evergreen seeks an extension of both the first-year and second-year award (i.e. through March 10, 2004 for the first-year award and through April 23, 2004 for the second-year award). Kalitta seeks an extension through March 10, 2004, for implementation of both its first-year and second-year frequency awards.

Evergreen states that it has faced particular challenges in establishing its service by the required startup dates and this has been further complicated by its extensive commitments to the U.S. military, by continued slackness in relevant Asian markets, and by authorization of other carriers in the proceeding to simultaneously commence Hong Kong-Seoul fifth-freedom services. Evergreen states that it remains committed to operating the frequencies awarded in this proceeding, commencing services no later than March 10, 2004, and April 23, 2004, respectively, or at earlier dates with 30-day notice being given to the Department and interested parties.

Kalitta states that it has inaugurated service to Dubai with frequencies allocated for that service, but that it has encountered problems with beginning service via Seoul. It states that it is making progress on the infrastructure needed for service with Seoul but has had problems securing the services of a general sales agent for that city. It maintains that it is in the final stages for negotiating a contract for ground-handling in Incheon and that processing an application through the Korea Ministry of Construction and Transport (MOCT) has taken longer than anticipated.

Federal Express Corporation (FedEx) and Polar Air Cargo, Inc. (Polar) filed answers to the applications.<sup>1</sup> Evergreen, Kalitta and Polar filed replies.<sup>2</sup>

FedEx and Polar argue that Evergreen's frequencies should be revoked, citing a lack of demonstrable efforts on Evergreen's part to commence Hong Kong-Seoul services, and both carriers express interest in using the frequencies themselves, either permanently or on a *pendente lite* basis. FedEx also argues that Kalitta's frequencies should also be

<sup>1</sup> FedEx answer was accompanied by a Motion for reallocation of all four frequencies to FedEx on a permanent basis. Northwest filed an application for interim frequency allocation for one frequency and Polar expresses a desire for 4 frequencies either on an interim or permanent basis. We address these matters below.

<sup>2</sup> By Notice dated December 8, 2003, the Department shortened the answer period to the two applications to noon December 9, 2003, and replies to 10:00a.m. December 10, 2003.

revoked, noting that the carrier should not have waited until the week before its startup date to announce that it could not meet its December 11 startup obligations. Polar, on the other hand, argues that Kalitta's request is not unreasonable grounds for a startup postponement. Polar, however, would limit any waiver for Kalitta to 30 days.

On reply, Evergreen argues that both FedEx and Polar have in other markets requested and been granted repeated extensions of startup periods due to economic and other challenges and that Evergreen's request for a 90-day extension is no less meritorious and should be afforded the same opportunities in this case. Kalitta informs the Department that the Korean Ministry of Construction and Transportation (MOCT) has said that it anticipates taking the full statutory period in approving the carrier's pending application and has directed the carrier to request slots at Incheon Airport for a startup no earlier than February. Accordingly, Kalitta states that its full extension request (i.e. 90 days) should be granted.

Applicant rep: **Thomas V. Lydon, (Evergreen) 202-638-5500**  
**Mark W. Atwood, (Kalitta) 202-463-2513**  
 DOT analyst: **Linda Senese, 202-366-2367**

### DISPOSITION

**XX Granted waiver requests as follows:**

Kalitta request for 90-day extension of both frequencies from December 10, 2003 through March 10, 2004.

Evergreen request for 90-day extension of year 1 frequency from December 10, 2003, through March 10, 2004, and of year 2 frequency from January 24, 2004, through April 23, 2004.<sup>3</sup>

**Action taken by: Susan McDermott**  
**Deputy Assistant Secretary for**  
**Aviation and International Affairs**

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**Remarks:** By Order 2003-9-9, the Department finalized its decision in the *2002/2003 Hong Kong Fifth-Freedom All-Cargo Frequency Proceeding*, and allocated 40 frequencies among six applicants for new services in the Hong Kong fifth-freedom market. In reaching that decision, we recalled the approach we had followed in our tentative decision, where we said:

[a]mong the longstanding U.S. policy goals we would look to accomplish here are expanding the service choices for the U.S. shipper, both as to express and general cargo service; strengthening competition among U.S. carriers and among U.S. and foreign carriers in the Pacific rim region to the benefit of U.S. shippers; providing enhanced U.S. carrier route systems and hub connection possibilities to improve operational efficiencies and service; and promoting new entry into the fifth-freedom market.<sup>4</sup>

Against this background, we evaluated the proposals and made each of our selections based on the objectives we sought to achieve and in the interest of securing public benefits. In this regard, we allocated two weekly all-cargo fifth-freedom frequencies each to Evergreen and Kalitta for services between the United States and Hong Kong via the fifth-freedom point Seoul, Korea. We continue to believe that these carriers' services via Seoul will be in the public interest, and we will grant each carrier the 90-day waiver it has requested.

Taking into account, however, that other carriers have expressed strong and active interest in providing service in this market, we would expect the selected carriers to move expeditiously and vigorously to complete the steps required for inauguration of the authority that we awarded them.<sup>5</sup> In this regard, we will require Evergreen and Kalitta to file in this docket (and to serve on all parties in this proceeding) every 30 days beginning on the 30<sup>th</sup> day from issuance of this notice a letter apprising the Department in detail of its progress towards meeting the prescribed service start up. This

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<sup>3</sup>Evergreen's waiver from the startup condition for the first-year frequency is effective through March 10, 2004; Evergreen's waiver from the startup condition for the second-year frequency is effective through April 23, 2004, or until the date on which Evergreen begins service with each of these frequencies, whichever occurs earlier. Kalitta's waiver from the startup for both frequencies is effective through March 10, 2004, or until the date on which Kalitta begins service with each of these frequencies, whichever is earlier.

<sup>4</sup> See Order 2003-7-17 at 6.

<sup>5</sup> We are particularly concerned about Evergreen's efforts to date in this regard.

letter should include a complete status report of their application process before the Korean authority, including thorough discussion of Korean government evidentiary and other requirements, whether the carrier has met its target dates (consistent with timely startup) for completion of each such requirement, and, if not, an explanation as to why it did not. Failure to meet this reporting requirement may result in revocation of this waiver.

Notwithstanding this reporting requirement, we are putting both carriers on notice that there should be no expectation that an additional request will similarly be granted. As is our policy in considering waiver requests, we reserve the right to reexamine whether grant of this waiver continues to be in the public interest. Any future request to extend the waiver for the frequencies at issue here will have to be considered in light of the specific arguments offered and responses thereto, and in the context of the circumstances presented at that time, including whether another carrier seeks to use the frequencies at issue.

### **Interim Use of Frequencies**

As to the remaining frequencies, regarding FedEx's request for continuation of its *pendente lite* frequencies at Seoul, we note that when we granted such authority we prescribed a 30-day notice requirement to ensure a smooth transition and thus required awardees to specify startup dates for their proposed services.<sup>6</sup> Under those stated intentions, we thus directed FedEx that it could take down certain frequencies on a graduated basis.<sup>7</sup> In view of the circumstances presented, we will extend FedEx' *pendente lite* authority for two Seoul frequencies through March 10, 2004. However, since we expect both applicants to be in a position to begin services to Seoul on or before March 10, 2004, we will require Evergreen and Kalitta to inform the Department and FedEx at least two weeks prior to their inaugurating service so that FedEx can take down its services in a timely fashion.

We will issue in the immediate future a notice concerning procedures relating to award of interim authority for the remaining two frequencies.

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We found that our action was consistent with Department policy; and grant of the waiver was consistent with the public interest. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

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

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<sup>6</sup> See Order 2003-9-9 at 7.

<sup>7</sup> See Order 2003-10-20 at 2.