



UNITED STATES OF AMERICA
 DEPARTMENT OF TRANSPORTATION
 OFFICE OF THE SECRETARY
 WASHINGTON, D.C.

Issued by the Department of Transportation
 on the **19th day of July, 2004**

Served: July 19, 2004

In the Matter of

**2004 Cargo Designation and 2004/2005 All-Cargo
 Frequencies (U.S.-People's Republic of China)**

Docket OST-2004-18468

Order Requesting Additional Information and Establishing Further Procedures

Summary

By this order, we request applicants in the above-referenced matter to submit additional information, and we establish procedures for the designation of an additional cargo carrier and the allocation of available frequencies.

Background

On June 18, 2004, representatives of the United States and the People's Republic of China (PRC) initialed a protocol amending the US-PRC aviation agreement. The amended agreement greatly expands the opportunities for air carriers of both countries. These opportunities are increased progressively through 2010. Among the first opportunities for U.S. carriers is the ability of the United States to designate a new cargo carrier in the all-cargo market, effective August 1, 2004. Also effective August 1, 2004, the U.S. will have 21 additional all-cargo frequencies for all-cargo services. Effective March 25, 2005, the U.S. receives another 18 frequencies for all-cargo services.

On June 21, 2004, we issued a Notice announcing the above cargo opportunities for 2004 and 2005 under the amended agreement. Our notice invited interested air carriers to submit applications for these additional new cargo rights. Applications were due June 28; answers, July 6; and replies, July 8. The Notice directed interested carriers for the new designation to submit certificate applications, indicating an approximate date for beginning services, a proposed routing, equipment type, and number of frequencies for the proposed services. Applicants for this authority were also directed to specify clearly in their certificate applications the number of frequencies requested for the proposed startup and the number requested, if any, out of the 2005 allotment. The Notice further directed carriers already holding authority to perform scheduled all-cargo services to the PRC to file applications for the available 2004/2005 frequencies, indicating the markets to be served, the number of frequencies sought, the time at which the carrier proposes to begin using them (either beginning August 1, 2004, or beginning March 25, 2005), and the aircraft to be used. The Notice also stated that further procedures for acting on the applications would be established in the future by Department notice or order, if necessary.

Submissions

Seven all-cargo carriers submitted applications for the available opportunities: Arrow, Evergreen, Gemini, and Polar submitted certificate applications to become the newly designated all-cargo carrier in the US-China market and also filed requests for allocation of 2004 and 2005 frequencies. The incumbent all-cargo carriers (FedEx, Northwest, and UPS) submitted applications for the 2004 and 2005 frequencies. Each applicant submitted answers and replies.

In its answer, and again in its reply, Polar proposed that the Department proceed to reach a decision on the existing record or, alternatively, on the record that would exist if the parties were afforded one additional round of submissions. Evergreen, on the other hand, moved that the Department immediately institute a proceeding by which interested parties can make full evidentiary submissions supporting their applications. Arrow and UPS support Polar's procedural approach. FedEx and Northwest suggest approaches closer to that sought by Evergreen.

Decision

The newly negotiated agreement affords U.S. cargo carriers valuable new rights effective August 1. We believe that the public interest calls for prompt implementation of those rights and therefore favors the adoption of expedited procedures to facilitate that possibility. With this in mind, we have reviewed carefully all the pleadings so far submitted, along with the various procedural suggestions and motions. We have determined that the record would be meaningfully enhanced with a limited degree of additional input from the parties. We have therefore decided to afford the parties one additional opportunity to augment and/or clarify their proposals along with one further opportunity for responsive comment.¹ We have attached an Appendix setting forth the specific information sought. Applicants are free to provide any additional information that they might consider useful in helping us make our decision.²

Additional information is to be filed no later than 14 calendar days from the date of this order. Responses to these submissions will be due 7 calendar days thereafter.³ In consideration of this accelerated schedule, we authorized service of documents by facsimile and by electronic mail.

Upon receipt of the additional information requested, and upon careful consideration of all materials of record, we intend to proceed on an expedited basis to a tentative decision (show-cause order), and then, following the opportunity for objections and answers, to a final decision.

In reaching our decision, our principal objective will be to maximize the public benefits that will result in award of the authority in this case. In this regard, we will consider which applicant(s) will be most likely to offer and maintain the best service for the shipping public. We will consider the effects of the applicants' service proposals on the overall market structure and the level of competition in the U.S.-China market, and any other market shown to be relevant, in

¹ To the extent that Evergreen's motion calls for procedures beyond this approach, we deny that request.

² Applicants are also free to rely on documents already submitted; however, we caution them that failure to provide all the information that we have requested may disqualify an applicant from consideration in this matter.

³ The requested information should be filed with the Docket Section by the date specified in Docket OST-2004-18468.

order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where they are relevant. We will consider whether to award backup authority for the certificate award in this case based on the material in the record.

Consistent with our current practice, the frequencies allocated in this proceeding will be for an indefinite term, provided that the carrier(s) continue to hold the underlying economic authority to serve the market. The awarded frequencies will also be subject to our standard 90-day dormancy condition, where for any frequency not used for a period of 90 days, the allocation with respect to that frequency will expire automatically and will revert back to the Department for reallocation so that it can be made available for another carrier on an immediate basis should it seek to use it.

ACCORDINGLY,

1. We direct all applicants in Docket OST-2004-18468 to submit the information as indicated in the Appendix to this order;
2. The additional information shall be submitted no later than 14 calendar days from the date of this order; replies to new information filed shall be submitted no later than 7 calendar days thereafter;
3. Consistent with our decision in the text of this order, we deny the motion of Evergreen, as well as similar suggestions for procedures that exceed those established by this order;
4. We will serve this order on all applicants in Docket OST-2004-18468 via electronic mail.

By:

KARAN K. BHATIA
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*

APPENDIX

To the extent not already provided, each applicant should provide the Department with the information requested below:¹

- Provide schedules, showing startup dates, with complete routings for origin and destination of all flights, indicating days scheduled for operation, equipment types, and variation of frequencies/routings by traffic season, if applicable. If not applicable, so indicate. If carriers will utilize change of gauge in equipment in their operations, indicate where and specify all information, as required below, for all aircraft. If change of gauge is not part of the carrier's proposed schedule, so indicate.
- Indicate capacity for all aircraft proposed for operations in the U.S.-China all-cargo market in this proceeding and clearly indicate how much of that capacity will be dedicated for U.S.-China traffic for each flight.
- Indicate whether the aircraft to be used in the proposed schedules are (a) on hand or (b) on order. If on hand, indicate where, and the extent to which, those aircraft are currently being used by the applicant. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate specific plans for achieving compliance. Also, indicate how the acquisition of needed aircraft has an impact on the specified schedules above.
- Indicate whether the carrier will accept a partial grant of its frequency allocation application, how such allocation would be used, and the startup for such services if different from above. Also, state whether there is a minimum number of frequencies that the carrier will accept. Carriers should also rank in terms of priority their requests for August 1, 2004, frequencies and March 25, 2005, frequencies and the points they would serve should all frequencies not be granted.
- Specify whether the applicant's service will be operated in conjunction with any cooperative arrangement (*e.g.*, wet lease, code share) with any other U.S. air carrier and/or any foreign air carrier.² If such services will be operated, provide a detailed description regarding such operations, as well as a copy of the cooperative agreement, if not already on file with the Department.
- (For designation/certificate applicants): Indicate whether, if the applicant is not selected for the primary certificate award, the applicant would accept a backup award; if so, indicate if such applicant would accept a condition that the backup carrier will implement services by a date specified by the Department.

¹ Applicants should ensure that their proposed routings and other information supplied is clear and that there are no discrepancies in their presentations. Should discrepancies exist in documents already submitted, applicants should remedy such discrepancies.

² Under the amended Agreement, a code-share arrangement between U.S. airlines is not permitted until January 1, 2006.

- (For incumbent frequency applicants): Provide a complete description of all existing all-cargo China services, including how the frequencies currently allocated are being used (*i.e.*, routings and schedules of all-such frequencies).