



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

Issued by the Department of Transportation on **September 10, 2004**

**NOTICE OF ACTION TAKEN -- DOCKET OST-2002-13299**

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).

Request of ATLAS AIR, INC., (ATLAS) filed 9/1/04 for:

**XX** Activation of Backup Authority and Designation for U.S.-Mexico All-Cargo Service

**Background**

By Order 2003-5-23, the Department awarded Express.Net Airlines, LLC (Express.Net) primary authority and Atlas backup authority to provide certain U.S.-Mexico all-cargo scheduled service in the *2002 U.S.-Mexico All-Cargo Exemption Service Case*, Docket OST-2002-13299.<sup>1</sup> Express.Net's award was subject to the condition that it begin its proposed service by August 20, 2003. Once service was implemented, the route authority was further subject to a 90-day dormancy condition, whereby the exemption authority for a given route(s) would become dormant if it were not used for a period of 90 days.

Order 2003-5-23 provided further that Atlas' backup exemption authority would not become effective until: (1) Express.Net notifies the Department that it decided not to inaugurate service or that the subject Mexico authority is dormant; (2) Atlas notifies the Department that it is still in a position to implement the services it proposed in the *Proceeding* and requests the Department to activate its backup exemption authority; and (3) the Department takes action to activate the backup authority.<sup>2</sup>

**Dormancy Notices**

By letter dated December 31, 2003, Express.Net advised the Department that its authority to serve the Dayton-El Paso-Chihuahua markets was dormant and, by letter dated August 30, 2004, Express.Net advised the Department that its authority to serve the Dayton-Monterrey-Guadalajara-Mexico City markets also was dormant.

**Request for Activation of Backup Authority**

By letter dated September 1, 2004, Atlas requested activation of its backup exemption authority to provide U.S.-Mexico all-cargo service between: (1) Huntsville, Alabama, 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. Atlas also requested designation under the U.S.-Mexico aviation agreement to provide the services proposed. Atlas states, further, that it is still in a position to institute service in the U.S.-Mexico market. In this regard, Atlas maintains that, as soon as its backup authority has been activated and Atlas has obtained the requisite license from the Mexican government, Atlas plans to commence service in the markets with B747 freighter aircraft.

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<sup>1</sup> Specifically, Express.Net was awarded exemption authority to serve the Dayton-Monterrey-Guadalajara-Mexico City and Dayton-El Paso-Chihuahua markets. Atlas was awarded backup exemption authority to serve the Huntsville-Mexico City-Guadalajara and Los Angeles-Mexico City-Guadalajara markets.

<sup>2</sup> Order 2003-5-23 stated further that, should the backup exemption authority of Atlas become activated, the authority would remain in effect for two years, subject to conditions.

Applicant rep: Russell E. Pommer (202) 822-9121 DOT analyst: Linda L. Lundell (202) 366-2336

## DISPOSITION

**XX Granted Atlas' request for activation of its backup exemption authority, subject to conditions** (see below)<sup>3</sup>

The above action was effective when taken: September 10, 2004, through September 10, 2006.

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

**XX Authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

**XX Holder's certificates of public convenience and necessity**

**XX Standard exemption conditions (attached)**

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**Conditions:** The backup exemption authority activated here for U.S.-Mexico all-cargo services is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2.<sup>4</sup>

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On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found Atlas qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy, (2) grant of the request was consistent with the public interest; and (3) grant of the request would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. 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.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electric 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>3</sup> In light of our action here activating Atlas' backup authority, we will proceed to designate Atlas under the U.S.-Mexico aviation agreement to provide the subject all-cargo services.

<sup>4</sup> See, also, footnotes 17 and 19 in Order 2003-5-23 in the *2002 U.S.-Mexico All-Cargo Exemption Service Case*.

## APPENDIX

### **U.S. Carrier Exemption Conditions**

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

05/2004