



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

Served: Dec 12 1997

Issued by the Department of Transportation
on the 12th day of December, 1997

Application of

VOLGA-DNEPR J.S. CARGO AIRLINE

Docket OST-95-733

for an exemption under 49 U.S.C.
§ 40109

ORDER GRANTING EXEMPTION

Summary

In this order we grant Volga-Dnepr J.S. Cargo Airline (Volga-Dnepr), a foreign air carrier of the Russian Federation, an exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of property and mail between the Russian Federation and New York, New York, via intermediate points, for a period of 90 days.

Background

By Order 97-9-5, issued September 5, 1997, we granted Volga-Dnepr exemption authority to engage in scheduled foreign air transportation of property and mail between the Russian Federation and New York, New York, for a period of 90 days.¹ We noted

¹ Volga-Dnepr holds exemption authority to engage in scheduled foreign air transportation of property and mail between the coterminal points Ulyanovsk and Moscow, Russia, and the U.S. coterminal points Houston, Texas, and Bangor, Maine, via Luxembourg and Gander, Newfoundland; and to conduct all-cargo charters subject to prior Department approval. See Order 94-10-13. On October 12, 1995, Volga-Dnepr filed a timely renewal application and invoked the automatic extension provisions of the Administrative Procedure Act {5 USC 558(c)} to keep its all-cargo scheduled and charter authority in effect pending final Department action on its renewal application. That authority continues in effect. See Docket 49327. On June 25, 1997, Volga-Dnepr filed a motion seeking expedited treatment of its pending requests to renew and amend its scheduled and charter all-cargo authority. In its June 25 motion, Volga-Dnepr also modified its application so as to seek authority to New York from Russia as a whole and also to seek such authority "via intermediate points." Volga-Dnepr stated that its request for expedited action, to the extent that it involves New York, was tied to its plans to institute scheduled service using B-747 aircraft wet leased from Evergreen International Airlines, Inc.

that the authority requested was encompassed by the bilateral aviation agreement between the United States and the Russian Federation and that Volga-Dnepr was licensed and designated by its government to perform the proposed services. We limited the duration of Volga-Dnepr's New York authority while we sought to resolve outstanding issues in our aviation relationship with the Russian Federation in the context of bilateral aviation negotiations scheduled for November 1997, in Moscow.

Application

By application filed December 2, 1997, Volga-Dnepr seeks to extend its authority to engage in scheduled foreign air transportation of property and mail between the Russian Federation and New York, New York.² Volga-Dnepr states that although it has not yet commenced the proposed services it intends to do so once it has obtained all the necessary governmental approvals. Volga-Dnepr asks that we grant its request for a period of one year.

Pleadings

Answers were filed by United Air Lines, Inc. and Evergreen International Airlines, Inc.

United opposes grant of Volga-Dnepr's request and states that we should not extend Volga-Dnepr's authority while the Russian government refuses to renew United's bilaterally-agreed rights to codeshare with Lufthansa on services between the United States and Moscow. United further states that we should not grant Volga-Dnepr any new or renewed authority while the Russian authorities refuse to allow U.S. carriers to overfly Russia on newly opened Far East routes.

Evergreen supports grant of Volga-Dnepr's request, citing the significant economic benefits which will be derived by both Evergreen and Volga-Dnepr.

No further pleadings were filed.

Decision

We have decided to grant Volga-Dnepr an exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of property and mail between the Russian Federation and New York, via intermediate points, for a period of 90 days from the

While Order 97-9-5 addressed (and granted) the former requested modification, it was silent on the request concerning intermediate point authority. Thus, as a technical matter, that request--since not expressly granted or deferred--was effectively denied by Ordering paragraph 6 of that order.

² Volga-Dnepr once again requests that the authorization permit service "via intermediate points."

service date of this order.³ We find that grant of this authority is consistent with the public interest.

The authority requested by Volga-Dnepr is encompassed by the bilateral aviation agreement between the United States and the Russian Federation, and Volga-Dnepr is properly licensed and designated by its government to perform the proposed services. Although the Annexes to the Agreement have formally expired, they continue to be invoked by both parties as the operative source of the route rights governing the relationship.⁴

As noted above, in its June 1997 motion for expedited action and its request at issue here, Volga-Dnepr sought authority to conduct its New York services via intermediate points. As was the case with the Russia-New York authority that we did in fact grant, this request for authority to serve “via intermediate points” is also fully consistent with the Agreement, and indeed it was never our intention to withhold it. However, while it was our intention to grant Volga-Dnepr’s request to conduct its New York services via intermediate points, we inadvertently failed to include such rights in Order 97-9-5. We are correcting that oversight here.

As we previously have stated, we remain concerned over the difficulties encountered by United with the Russian Federation to renew its U.S.-Moscow code-share arrangement with Lufthansa and recognize that further efforts between the two governments are required to reach a satisfactory solution to the matter.. We are also pursuing with the Russian authorities a resolution of the overflight routing issue referred to by United.

While the talks held in Moscow during November did not resolve these matters, delegations representing the United States and the Russian Federation are expected to meet in early 1998 to continue their discussions. Against this background, we have decided that it is in the public interest to extend Volga-Dnepr’s New York authority for an additional 90 days. At the end of that period we will again assess the situation.

Based on the foregoing, we find that our action is consistent with the public interest and does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We grant Volga-Dnepr J.S. Cargo Airline an exemption from § 41301 of Title 49 of the U.S. Code to permit it to conduct scheduled foreign air transportation of property and mail between the Russian Federation and New York, via intermediate points;

³ Since the duration of Volga-Dnepr’s authority to serve New York is for a period of fewer than 180 days, it is not a license with reference to an activity of a continuing nature within the meaning 5 USC 558(c). See 14 CFR Part 377.

⁴ See Air Transport Agreement between the United States and the Russian Federation, entered into force January 14, 1994. The Annexes to the Agreement expired May 31, 1997.

2. The authority granted above shall be effective for 90 days from the service date of this order;
3. In the conduct of the services authorized above, Volga-Dnepr J.S. Cargo Airline must adhere to (1) the conditions set forth in Order 94-10-13, (2) FAA-approved flight routings for its operations, and (3) the provisions of the bilateral aviation agreement between the United States and the Russian Federation ;
4. To the extent not granted or deferred, we deny all requests for relief in this Docket;
5. We may amend, modify, or revoke this order at any time and without hearing; and
6. We shall serve a copy of this order on Volga-Dnepr J.S. Cargo Airline; United Air Lines, Inc.; Evergreen International Airlines, Inc.; the Ambassador of the

Russian Federation in Washington, D.C.; the Federal Aviation Administration (NY IFO); and the Department of State (Office of Aviation Negotiations).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)