



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

Served: June 17, 1998

Issued by the Department of Transportation  
on the 17th day of June, 1998

In the matter of

Brazil Cargo Charter Authorizations  
(1998/1999)

Docket OST-98-3746

**Final Order**

**Summary**

By this order we finalize, with one exception, our tentative findings and conclusions in Order 98-4-19 to use simplified procedures to distribute the 750 charter flights available for all-cargo services between the United States and Brazil for the 1998/99 charter year, beginning July 1, 1998, and to allocate all-cargo charter flights as follows: 154 all-cargo charters to Florida West International Airways, Inc.; 146 to Southern Air Transport, Inc. (SAT); 28 to Arrow Air, Inc.; 26 to Air Transport International L.L.C. (ATI); and 24 to Tower Air, Inc. We have modified our tentative decision to award 80 all-cargo charters to Atlas Air, Inc. and to retain 292 charters in a charter pool for distribution on a first-come, first-served basis.

**Background**

By Order 98-4-19, we tentatively decided to use simplified procedures to allocate the charters awarded for all-cargo services in the U.S.-Brazil market. Specifically, under the simplified procedures a portion of the 750 available charters would be allocated in advance to incumbent carriers on a use-or-lose basis, based on their most recent two-years' experience in the market; the balance would be maintained in a charter pool for distribution on a first-come, first-served basis. These procedures had been established by the Department in 1992 when the number of charters available was sufficient to meet the demand for all-cargo services. When demand for Brazil charters increased, the

Department returned to comprehensive comparative allocation procedures to allocate the available charters. Based on recent experience in U.S. carrier use of Brazil cargo charters, the Department tentatively decided that a return to the simplified procedures was warranted.<sup>1</sup>

### **Responsive Pleadings**

Only Atlas Air, Inc. filed an answer to our show-cause order. Atlas objects to the Department's tentative decision only to the extent that the proposed decision limits Atlas' allocation to a total of 44 charters. Atlas states that the Department's allocation formula penalizes new entrant airlines that do not have a two-year history in the market. Atlas further states that although it operated 80 charters in the last two calendar years, the formula ignores the strong demand for Atlas' service this past charter year. Atlas urges the Department to reconsider its allocation formula so as to base advance allocations on the incumbent carrier's last full year of service in the market, and to award it an allocation of 80 charters for the 1998/99 charter year.

No answers to Atlas' objection were filed.

### **Decision**

We have decided to make final our tentative decisions in Order 98-4-19 with one exception. Specifically, we will make final our decision to use simplified procedures to allocate the available Brazil charters and to allocate 154 charter to Florida West, 146 charters to SAT, 28 charters to Arrow, 26 charters to ATI and 24 charters to Tower. We will modify our decision to increase the allocation to Atlas to a total of 80 charters and to retain a total of 292 charters in the charter pool.

No party has objected to our tentative decision to use simplified procedures to allocate Brazil charters. As we noted in our show-cause order, U.S. carrier use of the charters for the past two years demonstrates that an allocation proceeding is not necessary and that simplified procedures will provide a fair, equitable, and efficient means of allocating the flights and ensuring that the interests of all parties are met.

We are not persuaded by Atlas' suggestion that we should modify our procedures to base the advance allocations solely on the incumbent carrier's last full year of service. A two-year average reflects a more comprehensive view of a carrier's historic operations in the market and balances any unusual increases or decreases in a carrier's operations. For

---

<sup>1</sup> Order 98-4-19 fully describes the history of the Department's procedures in allocating Brazil all-cargo charters.

these reasons, we have previously found that a two-year average generally provides a more realistic indicator of a carrier's operations for the purpose of advance allocations.<sup>2</sup> Atlas has not persuaded us that a generic change to our procedures is warranted.

We have decided, however, based on the particular circumstances of the case now before us, to increase Atlas' charter allocation for the 1998/99 charter year. In this regard, we note that, with 750 annual flights available overall for the charter year, providing for an increased allocation to Atlas would still leave nearly 300 charters in the charter pool and thereby available to carriers for distribution on an ad hoc basis. In light of the above, and given the fact that U.S. carrier historic operations in the market over the past few years have demonstrated that sufficient charters have been available to meet demand, we are persuaded that the requested increase in Atlas' advance charter allocation for this year will not compromise the ability of any other carriers to serve the market. We also note that no party has objected to Atlas' request and that Atlas' pattern of service over the past 16 months, an average of seven charters per month, demonstrates its capability to operate the charters requested. In these combined circumstances, we have decided to grant Atlas' request to increase its advance charter allocation.

#### **ACCORDINGLY,**

1. We make final our tentative decision in Order 98-4-19 to use simplified procedures for distribution of the 750 available U.S.-Brazil all-cargo charters for this and future years and to allocate the available charters as set forth in the text of Order 98-4-19, as modified by this order;<sup>3</sup>
2. For the charter year beginning July 1, 1998, we allocate the 750 available U.S.-Brazil all-cargo charters to the following carriers: Florida West International Airways, Inc. - 154; Southern Air Transport, Inc. - 146; Atlas Air, Inc. - 80; Arrow Air, Inc. - 28; Air Transport International, L.L.C. - 26; and Tower Air, Inc. - 24.
3. We require each carrier allotted U.S.-Brazil all-cargo charters to inform the U.S. Air Carrier Licensing Division (X-44), Office of International Aviation, by letter no later than 14 days after the service date of this order as to how many of the flights in its advance allotment that it has plans to operate and how many it is returning to the charter pool;<sup>4</sup>

---

<sup>2</sup> See Order 92-6-46.

<sup>3</sup> As we provided for answers to our tentative decision, we will not entertain petitions for reconsideration of this order.

<sup>4</sup> We remind carriers receiving advance allotments of the importance of returning charters promptly at anytime should the plans on which the allocations were accepted not materialize. Where charter rights are limited, it is imperative that full, effective use be made of the available charter opportunities.

4. The advance allotments in paragraph 2, above, are subject to the following condition: Where fewer than 40 percent of a carrier's allocated charters have been used or been committed for use by firm contracts during the six-month period ending December 31, the remaining charter allotments exceeding the number equal to the number of those already operated or committed in the preceding six months will be forfeited and placed in the charter pool;

5. We reserve 292 charters, not subject to advance allotment, to a charter pool for distribution on a first-come, first-served basis subject to the following conditions:

(a) For the period July 1 through September 30, only carriers that have no advance allotments will have access to the charter pool; distributions will be made on a first-come, first-served basis and eligible applicants may operate up to ten charters per month;

(b) Carriers receiving advance allocations are not eligible to obtain flights from the charter pool until October 1, after which date they may apply for up to ten charters per month. Carriers holding scheduled combination or all-cargo authority in the U.S.-Brazil market are not eligible applicants until after April 30;

(c) After April 30, no restrictions apply on the number of charters that may be applied for each month;

(d) Applications to operate charters may be filed no earlier than 30 days in advance of the flight date;

(e) Applications must identify (i) the number of flights requested, (ii) proposed flight dates, including a four-day service window, (iii) the charterer(s), (iv) the city-pair markets involved by direction, (v) the type of aircraft to be used, and (vi) the type of cargo to be transported. Copies of the charter contract or some form of written evidence of the charter commitment is required at the time a charter is requested;

6. We require that each carrier granted advance allotment charters in this proceeding inform the U.S. Air Carrier Licensing Division (X-44), Office of International Aviation, by letter, no later than January 4, of the number of charters it has operated or has committed by firm contracts. For charters under contract, carriers shall indicate the charterer(s), dates, city-pair markets, and nature of the traffic;

7. We require each carrier granted either advance allotment or pool charters to notify the U.S. Air Carrier Licensing Division (X-44), Office of International Aviation, no later than the tenth day of each month (or until its charters are exhausted, whichever occurs earlier) of: (a) the number of Brazil all-cargo charters operated during the preceding month; (b) the city-pairs served by direction; (c) the date of each flight; (d) the charterer(s); (e) the type of aircraft used; (f) the type of cargo carried; (g) whether the carrier operated the flight(s) in its own right or with wet-leased equipment, and the number of flights operated by the carrier itself and the number operated by wet lease; and (h) the number of charters for which Brazilian authority was obtained for that month which subsequently were canceled or rescheduled;<sup>5</sup> Carriers allocated charters shall notify the Department and the Government of Brazil whether or not any charters have been operated by the carrier during the month;<sup>6</sup>

8. We delegate to the Director of the Office of International Aviation the authority to administer distribution of flights from the charter pool and, where deemed in the public interest, to waive the restrictions on the charter pool; and

9. We will serve a copy of this order on Arrow Air, Inc.; Atlas Air, Inc.; Air Transport International, L.L.C.; Florida West International Airways, Inc.; Southern Air Transport, Inc.; Tower Air, Inc.; the Ambassador of Brazil in Washington, DC; the U.S. Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration (AFS-200).

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at  
<http://dms.dot.gov/general/orders/aviation.html>*

---

<sup>5</sup> Reports on flights operated from the charter pool under a Notice of Consistency should also identify the date of the Notice granting the flights. A statement should also be included verifying that the Government of Brazil has been notified in writing of any changes and/or cancellations of flights.

<sup>6</sup> Carriers are advised that they must follow the Brazilian government's procedures for notification of change or cancellation or be subject to forfeiture of these flights by the Brazilian government.