

Served Sept. 4, 1998



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

Issued by the Department of Transportation
on the 4th day of September, 1998

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.¹

Background

By Notice of Action, dated June 8, 1998, 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, via intermediate points, June 8-September 6,

¹ Volga-Dnepr also 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 this all-cargo scheduled and charter authority in effect pending final Department action on its renewal application.

1998.² We noted 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.³ We limited the duration of Volga-Dnepr's New York authority pending the outcome of further bilateral aviation discussions between the United States and Russian Federation, which, at the time of our last grant, were scheduled to begin at the end of June 1998, in Moscow.

Application

By application filed August 14, 1998, 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, via intermediate points. Volga-Dnepr states that although it has not yet commenced the proposed services it intends to do so with wet-leased B-747 aircraft once it has obtained all necessary government approvals. Volga-Dnepr asks that we grant its request for a period of one year.

Pleadings

On August 31, 1998, United Air Lines, Inc. filed an answer opposing grant of Volga-Dnepr's request. United states that we should not extend Volga-Dnepr's authority while the Russian government refuses to renew United's bilaterally-agreed rights to code share with Lufthansa on services between the United States and Moscow. United argues that withholding approvals of Russian carrier requests is "the only means available" to persuade the Russian government to abandon its policy of withholding rights from United.⁴

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

² We had previously granted Volga-Dnepr similar authority in Order 98-3-13 for a period of 90 days.

³ 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 See August 31, 1998, Answer of United, at 3.

service date of this order.⁵ 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.⁶

We remain concerned over the refusal of the Russian Federation to renew the United/Lufthansa code share.⁷ Talks between the United States and Russian Federation have taken place in an effort to resolve this dispute, and further discussions are anticipated for this fall in Washington, D.C. 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;
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 ;

⁵ 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.

⁶ See Air Transport Agreement between the United States and the Russian Federation, entered into force January 14, 1994.

⁷ See Order 98-2-3 (Docket OST-97-2888), issued February 4, 1998.

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)

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