



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

Issued by the Department of Transportation on May 5, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5046

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).

Application of Challenge Air Cargo, Inc., filed 2/10/99 for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of property and mail between (1) any point or points in the United States via any authorized intermediate point to a point or points in Peru and beyond to any authorized beyond point,¹ (2) between Dallas/Ft. Worth via any authorized intermediate point to any authorized point in Venezuela and beyond to any authorized beyond point,² and (3) between Dallas/Ft. Worth via any authorized intermediate point to any authorized point in Brazil, and beyond to any authorized beyond point.³ Challenge also seeks to integrate these authorities with its existing certificate and exemption authority. Challenge requested that the authority for each country be granted, as applicable, coextensive with the duration of its existing certificate authority to serve Peru and Brazil and its existing exemption authority to serve Venezuela.

The Dallas/Ft. Worth International Airport filed an answer in support of Challenge's application.

Applicant rep: William H. Callaway, Jr., 202-298-8660 DOT Analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX **Granted in part** (subject to conditions, see below)

XX **Balance dismissed** (i.e., for longer-term exemption authority to serve Peru and Brazil, authority to operate to points beyond Venezuela, authority to serve Cuba as an intermediate point in the awarded Venezuela authority, see below)

(See Reverse Side)

¹ The U.S.-Peru aviation agreement provides that through June 11, 1999, U.S. carriers may provide service between any point or points in the United States via intermediate points to three points in Peru (to be selected by the United States). After June 11, 1999, there are no limits on the number of Peruvian points that may be served.

² For service to Venezuela from the Central Zone of the United States, the U.S.-Venezuela route applicable to Challenge's request here, the U.S.-Venezuela agreement provides for service only to Caracas and Maracaibo, via Cuba, Jamaica, and the Netherlands West Indies. Challenge currently holds authority on Route 353 to serve Jamaica and the Netherlands West Indies from the United States. The only remaining intermediate point "authorized" in the bilateral agreement but not now held by Challenge is Cuba. We, therefore, have treated this part of Challenge's application as a request for intermediate authority to serve Cuba. (See remarks.)

³ The U.S.-Brazil agreement provides for service between the United States and specified points in Brazil via open intermediate points and for service beyond Brazil to Argentina, Uruguay, Paraguay, and Chile. Challenge holds certificate authority on Route 353 to serve Paraguay and Chile, and exemption authority to serve Argentina. The only remaining beyond point "authorized" in the bilateral agreement but not now held by Challenge is Uruguay. We, therefore, have treated this part of Challenge's application as a request for beyond Brazil authority to serve Uruguay.

The above action, with respect to Venezuela, was effective when taken: May 5, 1999, through June 24, 2000 (coextensive with Challenge's other U.S.-Venezuela authority)

The above action, with respect to Peru and Brazil was effective when taken: May 5, 1999, through May 5, 2001 (see remarks)

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

XX The authority granted is consistent with the aviation agreements between the United States and Brazil, the United States and Peru, the United States and Venezuela, and the United States and Uruguay.⁴

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX Holder's certificate of public convenience and necessity**
XX Standard exemptions conditions (attached)

Conditions: The authority granted to serve unspecified intermediate points (Peru and Brazil) and beyond points (Peru) is limited to countries with which the United States has signed open-skies agreements and/or countries for which Challenge holds authority to serve under certificates and exemptions issued by the Department, and for which it holds route integration authority by virtue of either the present action or other action of the Department.

The route integration authority granted is subject to the condition that any service provided under the exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Challenge rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Challenge notifies us of its intent to serve such a market and unless and until the Department has completed any necessary selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Challenge's authority by virtue of the route integration exemption granted here, but that are not then being used by Challenge, the holding of such authority by route integration will not be considered as providing any preference for Challenge in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Dismissal: Consistent with our standard practice for this type of application, we granted Challenge's request for exemption authority for Brazil and Peru for a period of two years, and dismissed its request to make these authorities coextensive with its certificate authority to serve other U.S.-Brazil/Peru markets. Those certificate authorities were granted for a five-year term and do not expire until December 27, 2002, and October 2, 2001, respectively. We also dismissed that portion of Challenge's application to operate to points beyond Venezuela. The U.S.-Venezuela aviation agreement does not authorize service beyond Maracaibo and Caracas from the Central Zone. In addition, we have dismissed Challenge's request to serve Cuba. U.S. Government regulations currently preclude U.S. carriers from operating scheduled services between the United States and Cuba (See 31 CFR Part 515). Therefore, it is not the Department's policy to award new scheduled authority to serve this market.

(See Next Page)

⁴ We note that the aviation agreement between the United States and Peru does not authorize local traffic rights between Peru, on the one hand, and Argentina, Bolivia, Chile, Brazil, Paraguay, or Uruguay, on the other, until June 12, 1999.

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

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption authority was consistent with the public interest; and (3) grant of the authority would not constitute a "major federal action" under the Energy, Policy and Conservation Act of 1975. To the extent not granted or dismissed, 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 ten (10) 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 electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*