



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

Issued by the Department of Transportation on December 1, 1999

**NOTICE OF ACTION TAKEN -- DOCKET OST-99-6413**

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 **Atlas Air, Inc.** filed **10/26/99** for:

**XX** Allocation of two U.S.-South Africa all-cargo frequencies

**XX** Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of property and mail between points in the United States and points in Egypt, Kenya, Spain, Zimbabwe, and South Africa and to integrate this authority with authority under its existing certificates of public convenience and necessity and under its existing exemption authority. Atlas initially plans to operate two weekly round trip flights between the United States and South Africa. One round trip would operate over a routing of Chicago-Detroit-Birmingham (U. K.)- Luxembourg (Luxembourg)-Cairo (Egypt)-Johannesburg (South Africa)-Harare (Zimbabwe)-Nairobi (Kenya)-Cairo-Luxembourg-Detroit.<sup>1</sup> The second round trip would operate over a routing of Detroit-Birmingham-Luxembourg-Cairo-Johannesburg-Vitoria (Spain)-Luxembourg-Detroit. The carrier requests that Luxembourg and Vitoria be designated as intermediate points under the U.S.-South Africa aviation agreement. Finally, the carrier states that it does not propose to transport local traffic between Birmingham and any points other than U.S. points.

Applicant rep: **William C. Evans, 202-371-6030** DOT Analyst: **John Quay, 202-366-1052**

**DISPOSITION**

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

The above action was effective when taken: **December 1, 1999**, through **December 1, 2001**, or until 90 days' after final Department action granting corresponding certificate authority for Atlas Air, whichever occurs earlier.<sup>2</sup>

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

**XX** The exemption authority granted is consistent with the U.S.-South Africa Air Transport Agreement and the aviation agreements between the United States and the United Kingdom, the United States and Luxembourg, and the United States and Spain. The exemption authority granted with respect to service between the United States and Egypt is covered by the agreement between the two countries, and service beyond Egypt is extrabilateral but consistent with the overall state of aviation relations between the United States and Egypt. Finally, the authority granted for service to and beyond Kenya and Zimbabwe is consistent with the overall state of aviation relations between the United States and these countries.

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 exemption conditions (attached)**

<sup>1</sup> Atlas currently holds the necessary exemption authority to serve Birmingham and Luxembourg. See Remarks section.

<sup>2</sup> Atlas has applied for a certificate of public convenience and necessity to serve Egypt, Kenya, Luxembourg, Spain, South Africa, and Zimbabwe in Docket OST-98-4348.

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**Remarks:** Atlas holds exemption authority to operate from the United States to Birmingham and beyond on a blind sector basis. Notice of Action Taken, dated August 26, 1999, in Docket OST-99-6162. Atlas also holds exemption authority to operate from the United States via intermediate points to Luxembourg and beyond. Notice of Action Taken, dated August 28, 1998, in Docket OST-98-4301.

Under Section 1, Route 2, of the Annex to the U.S.-South Africa aviation agreement, U.S. carriers may operate from the United States via intermediate points to South Africa and beyond, with intermediate and beyond service limited to seven points with traffic rights. Four intermediate/beyond points have been selected by the United States, three of which—Cairo, Harare, and Nairobi—Atlas proposes to serve. Atlas also proposes to transport local traffic between South Africa and Luxembourg and Vitoria, thereby requiring selection of additional intermediate/beyond points. We will inform the Government of South Africa that the United States selects Luxembourg and Vitoria as additional intermediate/beyond points with traffic rights.

**Fuel:** Atlas has forecast that the proposed operations to South Africa will consume 17.7 million gallons of jet fuel annually. We find that the additional service to be provided under the authority granted and the resulting public benefits outweigh any adverse effects that may be caused by the increased fuel consumption.

**Conditions:** Consistent with our standard practice, the frequency allocation granted for South Africa services is subject to the condition that it will expire automatically and the frequencies will revert to the Department for reallocation if they are not used for a period of 90 days. The 90-day dormancy period will begin on the date of this notice.

The route integration authority granted is subject to the condition that any service provided under this 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 Atlas rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Atlas notifies the Department of Atlas' intent to serve such a market and unless and until the Department has completed any necessary carrier 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 Atlas' authority by virtue of the route integration exemption granted here, but that are not then being used by Atlas, the holding of such authority by route integration will not be considered as providing any preference for Atlas in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

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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 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 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](http://dms.dot.gov/reports/reports_aviation.asp)

**U.S. CARRIER**  
**Standard Exemption Conditions**

In the conduct of operations authorized by the attached notice, the 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) Comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; 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.