



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

Issued by the Department of Transportation on March 30, 2000

NOTICE OF ACTION TAKEN -- DOCKET OST-99-6633

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 **Gemini Air Cargo, Inc.** filed **12/10/99** to:

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

Scheduled foreign air transportation of property and mail between point or points in the United States, via intermediate point(s), and a point or points in Colombia. Gemini also requests authority to combine this exemption with Gemini's existing certificate and exemption authority.

Polar Air Cargo and United Parcel Service Co. (UPS) filed pleadings to the application. (See remarks, below)

Applicant rep: **Moffett B. Roller 202-331-3300** DOT Analyst: **Gerald Caolo 202-366-2406**

DISPOSITION

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

The above action was effective when taken: **March 30, 2000**, through **March 30, 2002**

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

XX **The authority granted is consistent with the March 15, 2000 Memorandum of Consultations between the United States and Colombia.**¹

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)**

¹ On March 15, 2000, delegations from the United States and Colombia signed a Memorandum of Consultations that set forth the text of an understanding and amendments to the 1956 Air Transport Agreement between the United States and Colombia. Among other things, the understanding and amendments provide that there would be no limitations on the number of carriers that could operate all-cargo services between the United States and Colombia and also, that there would be no limits on the frequency or type of aircraft for all-cargo service. The delegations undertook to recommend that their governments adopt this understanding and these amendments. They further stated the intent of their respective aviation authorities to permit operations provided for in the understanding and amendments as of March 15, 2000, pending entry into force of the understanding and amendments through an Exchange of Notes.

Conditions:

The authority granted to serve intermediate points in conjunction with Colombia service is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or 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, and is subject to all conditions attached to that authority.

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

Remarks:

The answers of Polar and UPS were filed prior to the March 15, 2000 Memorandum of Consultations. Before the MOC, the United States could designate only seven all-cargo carriers to serve Colombia and six had already been designated. Since Polar, UPS and other carriers were seeking the last designation, a carrier selection would have been necessary and the carriers had submitted comments supporting their selection. The MOC has now established an open-skies regime for all-cargo service so all the pending applications can now be approved and the issues raised by the carriers' answers are now moot.

On the basis of data officially noticeable under Rule 24(g) 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*

APPENDIX

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 (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) Except as specifically exempted or otherwise provided for in a Department Order, 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, including all FAA requirements concerning security; 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.