



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

Issued by the Department of Transportation on September 25, 2000

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5286

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: **Federal Express Corporation** filed **8/17/2000** for:

XX Waiver from 90-day dormancy condition:

By Notice of Action Taken dated May 4, 1999, in Docket OST-99-5286, the Department allocated Federal Express twelve (12) all-cargo Russia overflight frequencies to operate services between Paris, France, and Subic Bay, Philippines, via Tashkent, subject to our standard 90-day dormancy condition. That award was subject to the condition that it would expire automatically and the frequencies would revert to the Department for reallocation if they were not used for a period of 90 days.

By Notice of Action Taken dated November 24, 1999 the Department granted Federal Express a waiver of the 90-day dormancy condition through September 1, 2000. Under the terms of the waiver, the 90-day dormancy period would run from September 1, 2000 forward. Thus, absent a further waiver, the frequencies will revert automatically to the Department on November 30, 2000, unless Federal Express begins service by that date.¹

Federal Express now seeks an extension of the waiver of the 90-day dormancy condition for seven (7) of its twelve (12) overflight frequencies until September 1, 2001, stating that it currently plans to begin using a total of only five frequencies before November 30, 2000.² Federal Express states that it does not now anticipate using the remaining seven (7) frequencies until September 1, 2001.

No answers to the application were filed.

XX Waiver of advance filing requirement of Part 377.10(c)³

Applicant rep: **Nathaniel P. Breed, Jr. (202) 663-8078**

DOT Analyst: **Michael D. Bodman (202) 366-9667**

DISPOSITION

XX Granted, subject to conditions (see below).

¹Federal Express had initially proposed to begin service on October 1, 1999.

²Federal Express states that it will begin using four (4) of its frequencies on August 28, 2000, and another one (1) frequency beginning in late October.

³Federal Express' renewal application was filed fewer than 60 days before expiration of the last waiver granted.

The above action granting a dormancy waiver was effective when taken: **September 25, 2000**, through **September 1, 2001**.⁴

The above action granting a Part 377 waiver was effective when taken: **September 25, 2000**.

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

Remarks: The aviation agreement between the United States and the Russian Federation, Annex IV (Overflights) provides that U.S. carriers may operate 28 weekly (14 eastbound and 14 westbound) Europe-Southeast Asia overflights for scheduled combination and/or all-cargo services over the Tashkent area as of January 23, 2000. Thus, in addition to the Federal Express overflight frequencies that are the subject of this notice, there are 16 frequencies currently unallocated.

The Department has granted Federal Express waivers of the dormancy condition since November 24, 1999. The Department's dormancy condition is grounded on the policy that carriers seeking limited-availability authority in Department proceedings exercise that authority, or else that such authority will revert to the Department so that the rights will then be readily available for award to other interested carriers with firm plans to use the rights. While the Department has by its present action further extended until September 1, 2001, the dormancy waiver of Federal Express with respect to the unused overflight frequencies at issue here, we believe that the grant of dormancy waivers on an ongoing basis could, in the absence of countervailing circumstances, undermine the policy on which our dormancy condition rests.⁵ We thus advise Federal Express that, in future circumstances, we may no longer find that the public interest warrants a further extension of this dormancy waiver in the event that Federal Express continues to have no immediate plans to use its seven unused overflight frequencies.

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; and (2) grant of the waiver was consistent with the public interest. 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*

⁴Federal Express' waiver from the dormancy condition is effective until September 1, 2001, or until the date on which Federal Express begins service with these frequencies, whichever occurs earlier. Once the waiver ceases to be effective, the 90-day dormancy condition applies from that point forward.

⁵See Notices of Action Taken dated September 13, 2000 and March 27, 2000, in Docket OST-97-3178.