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Order 2001-3-27

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

125276

Issued by the Department of Transportation  
on the 29<sup>th</sup> day of March, 2001

Served: March 29, 2001

2000 U.S.-BRAZIL ALL-CARGO SERVICE CASE

Docket OST-2000-7559 - 72

**ORDER TO SHOW CAUSE**

**Summary**

By this order, we tentatively select (a) Atlas Air Cargo, Inc., for primary authority to serve the U.S.-Brazil market and allocate it 10 weekly frequencies for its services and (b) Gemini Air Cargo, Inc., for backup authority to the primary carrier. We will afford interested parties ten days to comment on our tentative findings and conclusions and five calendar days thereafter for replies.

**Background**

Under the Air Transport Agreement between the United States and Brazil, four U.S. carriers may be authorized to operate scheduled all-cargo services. These carriers collectively may operate a maximum of 24 round-trip all-cargo wide-body frequencies per week between the United States and Brazil.<sup>1</sup> Federal Express Corporation, Polar Air Cargo, Inc., and United Parcel Service/Challenge Air Cargo are the three U.S. designated air carriers for all-cargo services.<sup>2</sup> The fourth designation became available when Kitty Hawk International ceased operations and its allocated frequencies, as well as certain unused frequencies by incumbent carriers, became available.

By Order 2000-9-24, the Department invited carriers interested in the fourth designation and allocation of frequencies to file certificate applications for scheduled all-cargo service to Brazil. Originally, fourteen frequencies available to new entrant as well as incumbent carriers were placed at issue in this proceeding. As a result of the uncontested allocation of four of the

<sup>1</sup> The agreement provides that the number of flights are expressed as units representing wide-body freighters. One or more freighters may be substituted by narrow-body freighters in a ratio of two (2) narrow-body frequencies equal one (1) wide-body frequency. The agreement provides that designated airlines may operate from a point or points in the United States via intermediate points, to Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador de Bahia, and beyond Brazil to Argentina, Uruguay, Paraguay, and Chile.

<sup>2</sup> Allocations of the designated carriers are as follows: Federal Express, six weekly frequencies; Polar Air Cargo, four weekly frequencies; and UPS/Challenge, four weekly frequencies.

available frequencies to incumbent carriers, the number of frequencies available for new entrant carriers was later reduced to ten weekly frequencies.<sup>3</sup> Based on the amended scope of the proceeding, the Department invited applicants to file amended applications.<sup>4</sup> Amended applications were due December 7, 2000, with answers due December 19, 2000, and replies due January 5, 2001.

In response to our request for applications, three carriers--Atlas Air Cargo, Inc., Evergreen International Airlines, Inc., and Gemini Air Cargo, Inc.--submitted applications, answers, and replies. Also, the Houston Parties filed in support of Evergreen's application.<sup>5</sup>

On January 31, 2001, Atlas filed a motion for expedited action, stating that recent events in the charter market and the dwindling number of available U.S.-Brazil charters have created a pressing need for a completion of this proceeding. Gemini and Evergreen filed answers, concurring with the need for expedition. Gemini argues, however, that the Department should reject any attempt to use short-term considerations to affect a long-term determination and maintains that the timing of an award of scheduled authority in this proceeding will likely have little effect on the allocation of charter flights remaining in the 2000/2001 charter year due to the time needed to finalize an award and to obtain authority from Brazil for the scheduled service operations. Evergreen argues that the Atlas motion merely confirms that Atlas is not interested in mounting a scheduled operation.

### **Market Profile**

The U.S.-Brazil all-cargo market has received varying levels of service over the past decade. In the early 1990's, the U.S.-Brazil southbound traffic grew at an annual rate of 9.6% but northbound traffic experienced little growth. In the late 1990's however, the softening economic conditions caused the traffic in the market to decline, resulting in the curtailment of, or cessation of, service by both U.S. and foreign carriers in the market. During the past two years, however, the U.S.-Brazil market again has rebounded and continues to improve.

The record shows that Brazil is the second largest all-cargo U.S.-South American market, and that the U.S.-Brazil cargo market is nearly evenly balanced, with 53% of the traffic moving southbound and 47% moving northbound.<sup>6</sup> It further shows that Miami remains the largest gateway, accounting for over 69% of the traffic southbound and nearly 55% northbound, that New York is the second largest gateway accounting for 18% of the traffic southbound and 21% northbound, and Memphis ranks third in market size, having 5% traffic southbound and 9% northbound.

Overall, products transported southbound are higher monetary value products such as computer and electronic equipment, motor vehicle parts and accessories, photographic equipment, pharmaceutical preparations, and plastics products. The northbound products consist of lower

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<sup>3</sup> See Order 2000-9-24 and Notice of Action Taken, dated November 14, 2000, for complete description of how the frequencies at issue in this proceeding became available.

<sup>4</sup> See Notice of Action Taken, dated November 24, 2000, and Notice Revising Procedural Schedule, dated December 18, 2000.

<sup>5</sup> The Houston Parties consist of The City of Houston and the Greater Houston Partnership.

<sup>6</sup> DOT-IR-1B.

monetary value products such as footwear, leather goods, motor vehicle parts, agricultural products, (*e.g.*, fruits, nuts, and vegetables), and radio/television and phonograph materials.

According to the Department's T-100 data, for the twelve months ended December 1999, a total of 472 million pounds of cargo was transported between the United States and Brazil, with U.S. carriers transporting 240 million pounds of cargo on U.S.-flag all-cargo, combination, and charter services, and foreign carriers transporting approximately 232 million pounds of cargo.<sup>7</sup> Of the cargo transported by U.S.-flag carriers, only one third is carried on scheduled all-cargo carriers; thus the majority of traffic is carried on combination carriers and all-cargo charter carrier services.

### **Applicant Proposals**

All three applicants seek certificates of public convenience and necessity, a designation for authority to serve between the United States and Brazil, and allocation of frequencies for their proposed services. All three propose service with wide-body aircraft (Atlas and Evergreen with B-747-200 and Gemini with DC-10 and/or MD-11). Atlas and Gemini propose service using all of the available ten frequencies, and Evergreen proposes new carrier service with seven weekly flights. All three carriers hold broad scheduled certificate authority for all-cargo services, including several South American countries. All three applicants have proposed to integrate their Brazil services with other South American services, particularly to support northbound operations. (See the attached chart for a complete description of the carriers' routings.)

All Atlas flights would be operated from the Miami gateway. Four of the ten flights would be over a Miami-Sao Paulo routing; two over a Miami-Manaus routing; two over a Miami-Rio de Janeiro-Sao Paulo routing; and two over a Miami-Manaus-Sao Paulo routing. Northbound, Atlas' flights would serve Santiago, Chile; Lima, Peru; and Quito and Guayaquil, Ecuador, with only charter traffic being carried from Quito and Guayaquil. Atlas states that it would begin services 60 days after receipt of necessary Brazilian authority.

Gemini proposes to serve via the Miami and New York gateways, with behind-gateway services to Austin, Chicago, and Los Angeles in both directions. It plans to serve Manaus and Sao Paulo eight times weekly, and to serve Sao Paulo an additional two times a week. All flights would serve Santiago, Chile, and four weekly flights would serve Medellin, Colombia. Gemini states that it will begin services within 90 days of receipt of authority, depending on timing of a final order in relation to aircraft delivery dates, but is hopeful that it can initiate service on the Austin-Miami-Manaus-Sao Paulo route within 30 days of the issuance of a final order.

Evergreen proposes seven weekly flights, originating all of its southbound flights from its Columbus hub and serving from three U.S. gateways (Houston and New York twice weekly and

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<sup>7</sup> U.S. carriers may operate a total of 750 annual all-cargo charters. In the current charter year, 750 charters will not meet the needed demand. Department records show that in calendar years 1999 and 2000, Atlas operated 275 charters in 1999 and 397 charters in 2000; Gemini operated no charters in 1999 and operated 58 charters in 2000. Evergreen operated no Brazil charters during either of those years.

Miami thrice weekly).<sup>8</sup> Evergreen proposes to operate to Rio de Janeiro twice weekly, and to Manaus and Sao Paulo five times a week. Beyond Brazil, Evergreen would serve Buenos Aires and Santiago. Evergreen states that it does not anticipate seasonality in its operations, and that it would begin service as soon as possible, but in any event no later than 90 days after the effective date of a certificate award.

### **Positions of the Parties**

Each applicant argues that its proposed service is superior to other applicant proposals. Each argues that the other applicants do not have sufficient administrative support in the critical Miami gateway to market its services. All three criticize each other for operating as ACMI carriers (*i.e.*, carriers that primarily wet-lease their services, providing aircraft, crew, maintenance and insurance) rather than as scheduled carriers.

**Atlas** maintains that it is the most experienced carrier for U.S.-Brazil operations and that based on its charter experience, Brazil is a rebounding market that can support ten weekly round-trip frequencies with B-747 aircraft. It also maintains that Miami is the only proven and sustainable gateway; that nonstop and single-plane services from other cities have not been successful; and that the alternative gateway proposals of Gemini and Evergreen are not likely to be profitable. Atlas notes that it has a presence in Miami and facilities, such as operational, sales and administrative offices at Miami International Airport as well as a warehouse, maintenance hangar, and crew training facility to support its proposed operations. Atlas also maintains that its proposal is the most realistic in terms of the market, recognizing the need for other South America-U.S. service in the northbound direction because most northbound Brazil traffic can be carried more economically on the belly cargo services of combination carriers. Specifically, Atlas argues that northbound loads are lower value and that all-cargo services cannot offer rates competitive with the belly-cargo rates offered by the frequent combination carrier services. In this regard, Atlas criticizes the Evergreen and Gemini proposals for being too optimistic with respect to northbound traffic, given the characteristics of the market and demonstrated traffic flows.

Opponents of the Atlas proposal, argue that Atlas will not add anything new to the market since Atlas will carry the same traffic it carries now on its charter service. They also criticize Atlas for not projecting more northbound traffic and view its proposal as deficient for the needs of northbound shippers. Finally, other applicants question Atlas' intention to provide "scheduled" service, given statements by the company that it does not want to be a "scheduled" airline, the fact that it operates essentially ACMI (wet-lease and charter) services, and the fact that it intends to rely on shippers and consignees to provide pickup and delivery services. Atlas, on reply, argues that Atlas' expectation of its customers assuming responsibility for cargo collection and distribution is sensible because forwarders using all-cargo services either operate or have access to their own distribution networks.

**Gemini** also believes that the market can sustain ten weekly flights but argues that the market cannot sustain such service with B-747 aircraft as proposed by Atlas and Evergreen. Gemini

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<sup>8</sup> Service from Columbus and from Houston is directional (southbound only); northbound flights serve Miami with behind-gateway service to New York.

maintains that its smaller DC-10 and MD-11 aircraft are better suited to market flows and will enable Gemini to adjust to fluctuating market conditions. In addition, Gemini argues that the U.S.-Brazil all-cargo market needs service from U.S. cities other than Miami, and that based on the O&D traffic, service to such additional cities can be sustained. Gemini contends that Miami is saturated with service and has become the major gateway because no all-cargo carrier is providing effective service from other gateways (except Federal Express at Memphis). Gemini argues that past services to other cities have failed because the larger B-747 aircraft were used. Gemini states that with its more cost-efficient aircraft, its proposed services from other U.S. gateways (nonstop and single-plane) can be operated successfully and that exhibits in this case demonstrate that the demand exists.

Gemini agrees with Atlas that northbound traffic flows require traffic support for viable service, but contends that it can capture a greater portion of northbound traffic than suggested by Atlas.

Atlas and Evergreen argue that Gemini's use of smaller aircraft wastes valuable limited opportunities in the market, a market that has demonstrated a capability to sustain B-747 service. Atlas further argues that Gemini's multiple city service is not sustainable, notwithstanding Gemini's arguments to the contrary.

**Evergreen** maintains that the B-747 aircraft is the right aircraft for the Brazil market, but not at a ten-frequency level. It notes that no scheduled carrier has ever operated, or is close to operating, at that frequency level, especially with B-747 aircraft and argues that the express traffic carried on integrated carriers and lower value northbound items now carried on combination services will not be within the pool of traffic available to the new all-cargo carrier selected in this case, reducing the ability of the new entrant carrier to offer and sustain ten-weekly flight services as proposed by Atlas and Evergreen. Evergreen does agree, however, that the market can support additional scheduled B-747 service, but only at a seven-frequency weekly schedule.

Evergreen also agrees with Gemini that there is demand for service to other U.S. cities that should be met with nonstop and single-plane services. However, because of the different nature of the southbound and northbound markets, Evergreen maintains that only the southbound market can support nonstop and single-plane service from cities other than Miami. In particular, Evergreen contends that high-tech companies would prefer nonstop or single-plane service to trucking their high-value products to Miami, whereas in the northbound direction, the low-value products are more efficiently processed through Miami and trucked to their final destination.

Opponents of Evergreen argue that the carrier operates no service to South America, has no office in Miami, has no experience in the Brazil charter market, and would not fully use the rights available.

The Houston Parties note that Evergreen's service proposal includes twice-weekly service from Houston to Brazil, along with weekly service to Chile and that Houston is both historically and economically linked with the countries of South America and would welcome such new service from Evergreen.

## Tentative Decision

We have tentatively selected Atlas for the primary award and Gemini for backup authority in the U.S.-Brazil market.<sup>9</sup> We also tentatively allocate Atlas ten weekly frequencies to operate its services and Gemini ten weekly frequencies in the event that its backup authority is activated.

In instituting this case, we stated that our principal objective was to maximize the public benefits that will result from awarding this authority. We indicated that we would consider which applicant would be the most likely to offer and maintain the best service for the shipping public and that we would also consider the effect of the applicants' service proposals on the overall market structure of and level of competition in the U.S.-Brazil market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we stated that we would consider any other factors historically used for carrier selection where they are relevant.

After careful review of the record, we tentatively conclude that these objectives are best met by selecting Atlas for the primary award to serve the Miami-Brazil market. A selection of Atlas would maximize the benefits to the shipping public by affording shippers the most frequent service from the premier gateway for U.S.-Brazil all-cargo services and the most available capacity for such service. It would also strengthen the competitive position of U.S. carriers in the market by adding a new entrant in the scheduled market with an established presence at the premier gateway and would provide strong intragateway competition at Miami.

All of the applicants in this case would offer new scheduled all-cargo service to Brazil. The selected carrier will become the fourth designated U.S. airline for the operation of scheduled all-cargo operations and as such will afford the shipping public valuable weekly scheduled all-cargo service. The available service opportunity and attendant frequencies represent valuable rights that were obtained through negotiations in exchange for operating rights for Brazilian carriers, and the public interest clearly calls for full use of these rights. Accordingly, we tentatively find that all of the available frequencies should be awarded in this proceeding. In this regard, only the service proposals of Atlas and Gemini achieve that goal. Both carriers have presented service proposals that would use the available route rights to the maximum and thus would enhance the U.S. carrier presence in the U.S.-Brazil market. Although Evergreen would also provide new services to Brazil, it would make only partial use of the available frequencies, and, thus, we tentatively conclude that Evergreen's proposal offers fewer benefits than those of Atlas and Gemini.

As to the choice between Atlas and Gemini, we find points in favor of each of the carriers.

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<sup>9</sup> We examined the applicants' proposals and while they all could be said to suffer from certain problems in forecasting techniques and other areas, we believe that they remain basically attainable and not unreasonable. To the extent that the service proposals here would exceed a near-term increase in annual fuel consumption in excess of 10 million gallons, and thus, that award of such authority would constitute a "major regulatory action" under the Energy, Policy, and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations, we tentatively find that the additional service to be provided under this authority and resulting public benefits outweigh any adverse effects that may be caused by the increased fuel consumption. Based on officially noticeable data, we tentatively find that all applicants are fit, willing, and able to provide the proposed services. All three applicants have been found fit to provide scheduled air transportation of property and mail. See Order 99-12-7 for all three applicants.

As noted above, both Atlas and Gemini would offer ten weekly frequencies and, thus, fully use the available frequencies. Atlas would serve exclusively from Miami and would operate larger aircraft offering considerably more capacity than Gemini. Gemini would serve New York in addition to Miami, and offer single-plane behind gateway services, but would operate smaller wide-body aircraft, offering less capacity. Given the traffic levels and traffic patterns in the market, we tentatively find that Atlas' proposal offers the superior benefits in this case.

The U.S.-Brazil market is the second largest U.S.-South America market. While traffic levels have fluctuated over the years due to Brazil's economy, in 1999 over 472 million pounds of cargo were transported in the market by U.S. and foreign airlines. More recent data indicate a generally upward trend in the market from the mid-1990's period<sup>10</sup> and the potential for even greater growth in the future. For example, comparing nine-month periods ending September 30, 2000, and September 30, 1999, shows overall traffic growth of 15.6%.<sup>11</sup> Given this growth and level of traffic, we tentatively conclude that Atlas' proposal to offer the greatest amount of capacity is more beneficial in this case than Gemini's proposal to use smaller wide-body aircraft. Moreover, while Gemini maintains that its proposed aircraft offers greater flexibility to adapt to changes in traffic levels, the record shows that Atlas has been operating B-747 charters at nearly eight weekly flights for a sustained period at high load factors, transporting nearly 41 million pounds of cargo between Miami and Brazil in 1999.<sup>12</sup> Given this frequency of service and the load factors achieved, we believe that with scheduled service authority the carrier will be able to develop its business further to attain operation of its proposed ten weekly B-747 flights. In these circumstances, we tentatively conclude that authorizing the applicant proposing the greatest amount of capacity is justified by the record in this case and better serves the public interest.

We also believe that Atlas is in the best position to provide the greatest service benefits by providing its service from the Miami gateway. Miami is a proven gateway to Brazil as well as other countries in South America and accounts for nearly 70% of the southbound traffic in the U.S.-Brazil market. Nearly all of the existing scheduled and charter all-cargo U.S.-Brazil services are provided from Miami, and only Miami has demonstrated its ability to sustain service on a year-round basis. While Gemini and Evergreen have argued that there is a demand for such service from alternative gateways, we tentatively conclude that Atlas' Miami proposal offers superior benefits in this case.

Nor are we persuaded by the arguments of Evergreen and Gemini that Atlas does not have a presence in Miami, and thus will be unable to operate its proposed service successfully. Atlas performs extensive service from Miami International Airport. Atlas has provided evidence in this case that it has operational, sales and administrative offices at Miami International Airport, a separate warehouse, a maintenance hangar, and a crew training facility, all of which will be available for its proposed scheduled operations.<sup>13</sup> Moreover, Atlas' successful charter operations from the Miami gateway provides a further basis for anticipating the success of its proposed Miami-Brazil scheduled services.

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<sup>10</sup> Exhibit GR-T-3, at 3, Exhibit GR-302, Exhibit Atlas-206.

<sup>11</sup> Exhibit GR-310.

<sup>12</sup> Exhibit Atlas-210.

<sup>13</sup> Atlas amended application at 7.

Finally, we tentatively conclude that Atlas' service will provide significant structural benefits. Federal Express offers a total of five weekly flights and will soon increase its services to six weekly flights; Polar operates four weekly flights and UPS now operates two weekly flights, with plans to add two more flights in April. All but three of these 14 flights operate from Miami. Thus, Atlas' proposed services will offer strong competition to the services of Federal Express, Polar, and UPS at Miami. Given the high level of service proposed by Atlas, we expect such competition to be substantial and an incentive to incumbent carriers to provide shippers with service that meets their needs.

In reaching these tentative findings, we have carefully considered the arguments raised by Gemini and Evergreen against Atlas' proposal, and tentatively conclude that none warrants a different selection.

First, both criticize Atlas' proposal for not forecasting more northbound traffic from Brazil. Gemini in particular contends that Atlas' limited forecast northbound demonstrates that Atlas would not adequately serve the northbound Brazil-U.S. market, a market Gemini contends is larger than Atlas believes. Both argue that they would carry more northbound Brazil-U.S. cargo than would Atlas. In response, Atlas contends that its forecast is realistic and consistent with the traffic patterns in the market. Specifically, Atlas argues that the northbound market is volatile and difficult to serve on an all-cargo basis because the traffic can be transported more economically on belly-cargo space on combination flights. In these circumstances, Atlas maintains that unless Gemini and Evergreen price their services at extremely low levels to match the frequently low rates for northbound belly space on combination flights, much of the Brazil-originating freight that Evergreen and Gemini expect to attract will continue to move on combination service, alone or in conjunction with surface transportation to/from Miami.<sup>14</sup>

Based on our review of Atlas' forecast and the responsive comments, we tentatively find no basis to conclude that Atlas' proposed services would not meet the needs of the market. We note that in the base traffic year for this proceeding, while the overall traffic was marginally split (53% moved southbound and 47% moved northbound), of the 81 million pounds of cargo transported by U.S. scheduled all-cargo carriers 73% of the traffic was southbound traffic whereas only 27% of the traffic was northbound. Moreover, of the 110 million pounds of cargo transported northbound by all U.S. carriers, U.S. all-cargo carriers transported only 20% of the traffic.<sup>15</sup> In these circumstances, we tentatively find that Atlas' forecast accurately reflects the existing patterns of service in the market and that its forecast is reasonable. To the extent more traffic may be available, we have no reason to believe that Atlas will not ensure that such traffic is served on its flights. Indeed, Atlas has specifically stated that it expects to make vigorous sales efforts in Brazil, and that if the market proves to be more dynamic, Atlas will accommodate that demand.<sup>16</sup>

Second, Gemini and Evergreen argue that Atlas would not offer anything new to the market because it would essentially operate its current U.S. charter service as a scheduled carrier. Atlas now operates charter service on behalf of air freight forwarders, the same type of primary

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<sup>14</sup> Atlas Answer at 7 and 11.

<sup>15</sup> DOT-IR-1B and Atlas SR-3 (page 1)

<sup>16</sup> Atlas Reply at 10.

customers sought by all applicants in this case. With the introduction of scheduled service, Atlas will be able to serve these, as well as other customers, and to ensure its customers a regular and extensive pattern of available service. Moreover, contrary to the arguments of Gemini and Evergreen, given the high level of frequency operated and proposed by Atlas, we believe that its operations are well suited to providing scheduled service and that with Atlas' entry into the scheduled market, other carriers will have access to the charters available under the U.S.-Brazil agreement to develop their own operations in response to the needs of shippers.

### **Backup Awards**

As we stated in our instituting order, the opportunity to authorize additional services to Brazil is valuable. Therefore, we tentatively find that having a backup carrier in place for immediate implementation of service, should it become necessary, is in the public interest. We tentatively select Gemini as a backup carrier to Atlas. We believe that the benefits of Gemini's proposal, which would offer ten weekly flights, are superior to those offered by Evergreen. While both Gemini and Evergreen propose services to U.S. cities other than Miami, we tentatively believe that Gemini, by using Miami as its main departure and entry point, for a majority of its flights, will be able to mount a successful service should Atlas not implement and maintain its proposed services. Moreover, Gemini's ten flight-per-week proposal would make full use of the available frequencies, whereas Evergreen would use only seven frequencies. Since Gemini currently conducts operations in the U.S.-Brazil market through charter service, it would be in a position to implement services quickly should the primary carrier not inaugurate service or discontinue service during the first year of operations.

### **Certificate Conditions**

As we set forth in our instituting order, we propose to issue a five-year experimental certificate for the primary award and contingent certificate of one-year's effectiveness for the backup award. Consistent with our standard practice, the authority to be awarded here will be only for those points specifically proposed for service in the carriers' service plans and will not include all points in the United States or all points in Brazil.<sup>17</sup> We will also impose startup conditions on each award. Atlas and Gemini have stated in their submissions in this case that they would begin services within 60 and 90 days, respectively. We have, therefore, tentatively decided to require institution of service for Atlas within 60 days and for Gemini within 90 days after the effective dates of the certificates to be issued. Also, consistent with our standard practice, we propose to subject the frequency allocations awarded here to the condition that they will expire automatically and the frequencies will revert to the Department if they are not used for 90 days (once inaugurated) and will tentatively require that the inauguration of the awarded frequencies must occur no later than the 90<sup>th</sup> day after the required startup date in the carriers' certificates.

As we have noted, the frequencies allocated represent valuable rights obtained in exchange for rights to Brazilian carriers. Accordingly, we remind the selected carriers that the frequencies awarded are for weekly operations. A scheduled carrier may not bank frequencies from one week to the next. Failure to use the frequencies on a weekly basis will result in the forfeiture of the unused frequencies. Indeed, this proceeding, in part, was instituted because incumbent

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<sup>17</sup> See Orders 96-3-39, 96-6-12, and 2000-6-7.

carriers were not fully using their allocated frequencies and their failure to use the rights on a weekly basis resulted in those carriers losing some of their allocated frequencies. To facilitate our ability to monitor use of the frequencies, we propose to require the selected carrier to notify the Department by letter in this docket as to the date(s) on which the carrier will inaugurate the ten weekly flights. Should the carrier not implement all of the flights upon commencement of services, it must notify the Department as to the inauguration of each frequency. Any frequencies not inaugurated within 90 days from the required startup date would automatically revert to the Department for reallocation.

**ACCORDINGLY,**

1. We tentatively select Atlas Air Cargo, Inc., for award of primary authority to engage in foreign scheduled all-cargo transportation between the terminal point Miami, Florida, on the one hand, via the intermediate point Lima, Peru, and the coterminal points, Manaus, Rio de Janeiro, and Sao Paulo, Brazil, on the other hand, and beyond Brazil to Santiago, Chile;
2. We tentatively select Gemini Air Cargo, Inc., for backup authority to engage in foreign scheduled all-cargo transportation between the coterminal points Miami, Florida, and New York, New York, on the one hand, via the intermediate point Medellin, Colombia, and the coterminal points Manaus, and Sao Paulo, Brazil, on the other hand, and beyond Brazil to Santiago, Chile;
3. We tentatively allocate Atlas Air Cargo, Inc., ten weekly frequencies to perform its proposed operations; and Gemini Air Cargo, Inc. ten weekly frequencies should its backup certificate become activated;<sup>18</sup>
4. We direct any interested parties having objections to our tentative decisions set forth in this order and in ordering paragraphs 1 through 3 above, to file their objections with the Department, Dockets, in Docket OST-2000-7559, U.S. Department of Transportation, 400 Seventh Street SW, Room PL-401, Washington DC 20590, no later than ten days from the service date of this order; answers thereto shall be filed no later than five calendar days thereafter;<sup>19</sup>
5. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;<sup>20</sup>
6. If no objections are filed, we will deem all further procedural steps to have been waived, and will proceed to enter a final order, subject to Presidential review under section 41307 Subtitle VII of Title 49, the United States Code (Transportation);

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<sup>18</sup> Should Gemini's certificate become activated, six frequencies would be allocated for Miami-Brazil service and four frequencies would be allocated for New York-Brazil service.

<sup>19</sup> The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system. In the alternative, filers may use the electronic submission capability available through the Dockets DMS Internet site (<http://dms.dot.gov>) by following instructions on the web site.

<sup>20</sup> As we are providing for the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order.

7. We grant the motion of Atlas Air Cargo, Inc. for expedited action; and
8. We shall serve this order on Atlas Air Cargo, Inc.; Evergreen International Airlines, Inc.; Gemini Air Cargo, Inc.; the Houston Parties; the Ambassador of Brazil in Washington DC; the Federal Aviation Administration, and the U.S. Department of State (Office of Aviation Negotiations).

By:

**SUSAN MCDERMOTT**  
**Deputy Assistant Secretary for**  
**Aviation and International Affairs**

**(SEAL)**

*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)*

Attachment

Applications for U.S.-Brazil All Cargo Frequencies  
10 total frequencies and 1 new designation available

Carriers	Authority Sought <sup>1</sup>	Routing	Startup for Frequencies	Aircraft/Capacity
<i>Atlas</i>	Certificate; designation; route integration; 10 frequencies	<p><u>Flight 1 Mon:</u> Miami-Rio de Janeiro-Sao Paulo-Lima-Miami</p> <p><u>Flight 2 Tue:</u> Miami-Manaus-Sao Paulo-Santiago-Miami</p> <p><u>Flight 3 Wed:</u> Miami-Sao Paulo-Santiago-Miami</p> <p><u>Flight 4 Wed:</u> Miami-Manaus-Lima-Miami</p> <p><u>Flight 5 Thu:</u> Miami-Manaus-Sao Paulo-Santiago-Miami</p> <p><u>Flight 6 Thu:</u> Miami-Rio de Janeiro-Sao Paulo-Quito-Guayaquil-Miami<sup>2</sup></p> <p><u>Flight 7 Fri:</u> Miami-Sao Paulo-Santiago-Miami</p> <p><u>Flight 8 Sat:</u> Miami-Sao Paulo-Lima-Miami</p> <p><u>Flight 9 Sun:</u> Miami-Manaus-Buenos Aires-Santiago-Miami</p> <p><u>Flight 10 Sun:</u> Miami-Sao Paulo-Quito-Guayaquil-Miami</p>	60 days after receipt of all necessary Brazilian authority	B-747-200/one way, 206,200-226,200 lbs.

<sup>1</sup> In submissions to this proceeding, each applicant indicated its willingness to accept fewer frequencies. Atlas said it would accept seven, and Evergreen and Gemini stated they would accept five. Neither Atlas nor Evergreen indicated what markets it would serve with fewer frequencies. Gemini, however, stated that while it would accept a minimum number of five weekly flights, its company has a strong interest in receiving at least nine frequencies with which it would operate all of the flights in Pattern A (seven times weekly) and in Pattern C (two times weekly). If Gemini received an allocation of five frequencies, the company projects that it would use the frequencies to operate Pattern A five times weekly.

<sup>2</sup> Atlas states at page 11 of the amended application that Atlas will not pick up scheduled cargo traffic in Quito or Guayaquil, Ecuador; however, exhibits indicate the carrier will pick up charter cargo traffic at those points.

Carriers	Authority Sought	Routings	Startup for Frequencies	Aircraft/Capacity
<i>Evergreen</i>	Certificate; designation; route integration; 7 frequencies	<p><u>Flight 1 Mon:</u> Columbus-Houston (IAH)-Rio de Janeiro (GIG)-Buenos Aires-Miami-New York (JFK)</p> <p><u>Flight 2 Mon:</u> Columbus-Miami-Manaus-Sao Paulo (GRU)-Santiago-Guayaquil (tech stop)-Miami-New York</p> <p><u>Flight 3 Tue:</u> Columbus-Miami-Manaus-Sao Paulo-(VCP)-Buenos Aires-Miami-New York (JFK)</p> <p><u>Flight 4 Wed:</u> Columbus-New York-Manaus-Sao Paulo (VCP)-Manaus-Miami-New York (JFK)</p> <p><u>Flight 5 Thu:</u> Columbus-New York (JFK)-Manaus-Sao Paulo (VCP)-Santiago-Guayaquil (tech stop)-Miami-New York (JFK)</p> <p><u>Flight 6 Sat:</u> Columbus-Houston-(IAH)-Rio de Janeiro(GIG)-Santiago-Guayaquil (tech stop)-Miami-New York (JFK)</p> <p><u>Flight 7 Sun:</u> Columbus-Miami-Manaus-Sao Paulo (VCP)-Buenos Aires-Miami-New York (JFK)</p>	As soon as possible but in any event no later than 90 days after the effective date of the certificate	B-747-200/one way, 166,000-250,000 lbs.

Carriers	Authority Sought	Routeings	Startup for Frequencies	Aircraft/Capacity
<i>Gemini</i>	Certificate; designation; route integration; 10 frequencies	<p><sup>3</sup>Pattern A (4 x weekly): Austin-Miami-Manaus-Sao Paulo and return</p> <p>Pattern B (4 x weekly): Chicago-New York-Manaus-Sao Paulo-Santiago-Medellin-New York-Chicago<sup>4</sup></p> <p>Pattern C (2 x weekly): Los Angeles-Miami-Sao Paulo-Santiago-Miami-Los Angeles</p>	within 90 days of receipt of authority; depending on timing of final order in relation to aircraft delivery dates, Gemini is hopeful to initiate service on Pattern A routes within 30 days of the final order	<p>Patterns A &amp; B w/ DC-10-30F/ 164,000 lbs one way</p> <p>Pattern C w/ MD-11F/ 204,000 lbs one way</p>

<sup>3</sup> Pages 4 and 5 of Gemini's amended application are inconsistent regarding Patterns B and C. Page 4 for Pattern B shows service to Manaus; page 5 for Pattern B eliminates Manaus. Page 4 for Pattern C does not show service to Manaus, whereas Page 5 for Pattern C does show service to Manaus. However, in exhibits GR-212, Pattern of service for Pattern B Manaus is reflected and GR-213, Pattern for service for Pattern C does not show service to Manaus.

<sup>4</sup> Gemini notes that its forecast does not include traffic for any Brazil-third country or between third countries in Latin America. Gemini states, however, that it will increase its profitability to the extent it is able to carry such traffic on routes with traffic rights, e.g. Sao Paulo-Santiago. Gemini will not carry such traffic on route sectors without traffic rights, e.g. Sao Paulo-Medellin.

**Summary of All-Cargo Applicant Forecasts  
U.S.-Brazil Air Services (2001)  
Docket OST-2000-7559  
(Revenue Tons)**

	<u>Atlas</u>	<u>Gemini</u>	<u>Evergreen</u>
<b><u>Southbound</u></b>			
U.S. Originating Traffic			
U.S.-Brazil	44,910	33,540	22,286
U.S.-Third Country		2,600	10,248
Foreign Originating Traffic			
Third Country-Brazil		2,600	3,267
Total:	44,910	38,740	35,801
<b><u>Northbound</u></b>			
U.S. Destination Traffic			
Brazil-U.S.	10,760	27,040	20,395
Third Country-U.S.	33,422	10,490	11,724
Foreign Destination Traffic			
Brazil-Third Country			1,948
Total:	44, 181	37,530	34,067
Grand Total:	89,091	76,270	69,868
Source:	Atlas 205-Rev pp.5-6	GR-316	EZ-5