



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

Issued by the Department of Transportation
on the 19th day of December, 2006

Served: December 19, 2006

2006 U.S.-MEXICO ALL-CARGO SERVICE PROCEEDING

DOCKET OST-2006-24671

FINAL ORDER

By Order 2006-11-11, in the above-captioned docket, we tentatively awarded primary exemption authority to Centurion Air Cargo, Inc. (Centurion) and backup exemption authority to Florida West International Airlines, Inc. (FWIA) to provide scheduled all-cargo services in the following city-pair markets: Los Angeles-Guadalajara; Miami-Mexico City; and Miami-Guadalajara.

On balance, we tentatively found that Centurion proposes greater capacity in the subject U.S.-Mexico city-pair markets and presents overall the better proposal. Also, we tentatively found that, an award to Centurion of all three city-pair markets at issue in this proceeding would more fully use the valuable limited route rights, offer the greater overall benefits to the shipping public, and thereby offer more meaningful competition to the current U.S. and foreign incumbents.

Objections to the Department's tentative decision were due no later than November 27, 2006, with answers due no later than December 4, 2006.

No objections were filed to the Department's tentative decision in Order 2006-11-11. In light of the fact that no objections were filed and for the reasons set forth in Order 2006-11-11, we have decided to finalize our tentative decision.

Terms, Conditions and Limitations

We will issue two-year exemption authority to Centurion for foreign scheduled all-cargo service in the Los Angeles-Guadalajara, Miami-Mexico City, and Miami-Guadalajara markets. In addition, we will issue contingent exemption authority for one-year's effectiveness for backup foreign scheduled all-cargo service to FWIA for the Los Angeles-Guadalajara, Miami-Mexico City, and Miami-Guadalajara markets. Consistent with our policy regarding U.S.-Mexico authorizations, we will issue the subject primary and backup U.S.-Mexico authority on a city-pair basis, imposing the standard 90-day dormancy condition and dormancy notice requirements for U.S.-Mexico authority set forth in condition 7 of Appendix A of Order 88-10-2. As stated in our show-cause order, and consistent with our U.S.-Mexico licensing procedures, we will impose a startup condition for the primary award. The 90-day dormancy provisions would apply

only if the service has been inaugurated.¹ We will require Centurion to institute service on or before the 90th day after the service date of this order.

ACCORDINGLY,

1. We make final our tentative findings and conclusions set forth in Order 2006-11-11;²
2. We select Centurion Air Cargo, Inc., for primary authority and issue it exemption authority to provide foreign scheduled air transportation of property and mail between: (1) Los Angeles and Guadalajara; (2) Miami and Mexico City; and (3) Miami and Guadalajara, including route integration authority, subject to the dormancy provisions discussed in the text of this order and the conditions listed in Appendices A and B;
3. We select Florida West International Airways, Inc. for backup authority and issue it backup exemption authority to provide foreign scheduled air transportation of property and mail between: (1) Los Angeles and Guadalajara; (2) Miami and Mexico City; and (3) Miami and Guadalajara, including route integration authority, subject to the dormancy provisions discussed in the text of this order and the conditions listed in Appendices A and B;
4. The primary exemption authority granted by this order is effective immediately and will remain in effect for two years from the issue date of this order, subject to the startup and dormancy conditions discussed in the text of this order;³
5. The backup authority will not become effective until: (1) the primary carrier notifies the Department, pursuant to the startup/dormancy conditions, that it has decided not to inaugurate its proposed service in the subject market, or that its authority to serve the subject market has become dormant (as discussed in the text of this order); (2) the backup carrier notifies the Department that it is still in a position to implement the services it proposed, and requests the Department to activate its backup exemption authority;⁴ and (3) the Department takes action to activate its backup exemption authority. Should the backup exemption authority not become activated within one year of the issue date of this order, it shall expire automatically, and revert to the Department, one year from the issue date of this order;

¹ We note that the dormancy provisions are written such that carriers must advise the Department **as soon as** the decision not to inaugurate service or to discontinue service is made, but in no case later than the 91st day of dormancy (emphasis added). Because these are valuable limited-entry route rights, where carrier interest has been strong, we would expect carriers to notify us **immediately** of any decisions not to inaugurate or not to resume service in the subject markets. Notices should be filed in the form of a letter addressed to the U.S. Department of Transportation, U.S. Air Carrier Licensing Division, X-44, 400 Seventh Street, SW, Washington, DC 20590, and must identify the dormant city-pair market(s) and the date(s) the market(s) became (or will become) dormant. A copy of the letter shall be placed in Docket OST-2006-24671.

² This includes our tentative finding that Centurion is qualified to provide the proposed service (*see* Order 2006-11-11 at 5, n.12).

³ We find that our action here would not 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.

⁴ This notice can be filed in the form of a letter to the Director, Office of International Aviation, X-40, 400 Seventh Street, SW, Washington, DC 20590, and shall be placed in Docket OST-2006-24671, and served on all parties in that docket.

6. Should the above-described backup exemption authority become activated, the authority for that market will remain in effect for two years, subject to the dormancy provisions and other conditions discussed above;^{5 6}
7. We may amend, modify, or revoke the authority granted by this order at any time at our discretion without hearing; and
8. We will serve this order on the applicants in this proceeding; the Ambassador of Mexico in Washington, DC; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

ANDREW B. STEINBERG
Assistant Secretary for
Aviation and International Affairs

(SEAL)

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⁵ Should any of the subject backup authority become activated, such authority will be subject to the same startup conditions, dormancy conditions, and other conditions imposed on the primary carrier here.

⁶ Should any of the subject backup authority be activated, we note that such action would not 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.

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier 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) 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 all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; 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.

Route Integration Conditions for Centurion Air Cargo, Inc.

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

Route Integration Conditions for Florida West International Airways, Inc.

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