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

In the Matter of

U.S.-Brazil All-Cargo Frequencies and Designation

Docket OST-2000-7559 - 37

Served: November 13, 2000

NOTICE DENYING MOTION

On October 26, 2000, Federal Express Corporation, Polar Air Cargo, Inc., Challenge Air Cargo, Inc., and United Parcel Service filed a Joint Motion for immediate allocation of four frequencies, suspension of a procedural schedule and partial termination of the above captioned proceeding. They moved that the Department issue an order allocating immediately one U.S.-Brazil weekly roundtrip widebody frequency to Federal Express, one such frequency to Polar, and two such frequencies to UPS/Challenge. They further requested that, upon such allocations, the Department dismiss them from the above-captioned proceeding and terminate the proceeding as to their involvement. By Notice, served October 27, 2000, the Department shortened the answer period to the October 26 Joint Motion to October 30, 2000, and suspended the procedural schedule for the above-referenced proceeding. Gemini, among others, filed an answer on October 30, 2000.

After receipt of additional pleadings, including a Consolidated Reply from Gemini filed on November 1, the Department, on November 2, 2000, served a further Notice in the above-captioned matter which provided an opportunity for all participants in this proceeding to submit additional comments on the Joint Motion no later than Friday, November 3, 2000. The Notice stated "in light of our desire to make a prompt resolution of these matters, we will not be disposed to entertain any further comments beyond the deadline established here."

Atlas Air, Evergreen International, and the incumbent carriers submitted additional pleadings on November 3, 2000. On Saturday, November 4, 2000, Gemini electronically submitted a motion for leave to file a second consolidated surreply, which was effectively filed on Monday, November 6, 2000, the next business day. Gemini states that "it is in the public interest to allow Gemini this immediate response to arguments of Atlas and Evergreen that would otherwise go unchallenged."

We have decided to deny Gemini's November 4 motion. The Department has already given all parties, including Gemini, ample opportunity to comment on the matters presented by the Joint Motion. In the circumstances presented and in light of an expressed stated interest in coming to closure on the matters raised, our November 2, 2000 Notice made clear that we

would not be disposed to accept further comments beyond November 3, 2000. Gemini has presented no persuasive reason to warrant grant of its motion in this case.

We will serve this Notice on all parties to this proceeding by facsimile.

By:

SUSAN MCDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

Dated: November 13, 2000

*An electronic version of this notice is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*