143872

U.S. Department of Transportation
Office of the Secretary of Transportation

NOTICE OF ACTION TAKEN

DOCKET OST 2001-11010 -2

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applicant: **Volga-Dnepr J.S. Cargo Airline** Date Filed: November 15, 2001

Relief requested: Exemption from 49 U.S.C. 40109(g) to operate one one-way emergency cabotage cargo flight between Moffet Field, CA, and Cape Canaveral, FL, on or about November 29, 2001, using AN-124 aircraft, on behalf of Lockheed Martin Space Systems (LMSS), to transport one outsized ECHO satellite in container, six sea containers, and associated ground support equipment. The applicant stated that the transportation is necessary because of Lockheed Martin's need move the cargo on an urgent basis in order to avoid substantial delay in Lockheed Martin's satellite development schedule, and that due to the extremely delicate nature of the cargo and its high value surface transportation cannot be used to move the cargo. It also stated that because of the size of the cargo transportation on U.S.-carrier aircraft was not possible.

Applicant representative: Glenn Wicks (202) 457-7790

Responsive pleadings: The applicant served its application on those U.S. carriers operating large all-cargo aircraft. Each carrier indicated that it did not have aircraft available to conduct the proposed operation, and that it had no comment or did not oppose grant of the requested authority.

DISPOSITION

Action: Approved Action date: November 20, 2001

Effective dates of authority granted: November 29 - December 2, 2001

Basis for approval: We found that our action was consistent with all the relevant criteria of 49 U.S.C. 40109(g) for the grant of an exemption of this type, and that the grant of this authority was required in the public interest. Moreover, based on the representations of the U.S. carriers, we concluded that no U.S. carrier had aircraft available which could be used to conduct the operation at issue here. We also found that grant of this authority would prevent unreasonable hardship to the charterer.

Except to the extent exempted/waived, this authority is subject to the attached terms, conditions, and limitations.

Special conditions: The applicant shall comply with an FAA-approved flight routing for the authorized flight.

Action taken by: Susan McDermott
Deputy Assistant Secretary for
Aviation and International Affairs

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

(1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;

(2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;

(3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);

(4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;

(5) Conform to the airworthiness and airman competency requirements of its Government for international air services;

(6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;

(7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:

(a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

(b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

(8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;

(9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;

(10) If charter operations are authorized, except as otherwise provided in the applicable bilateral agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

(11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).