



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

**Joint Application of Atlas Air Worldwide Holdings, Inc.,
Airline Acquisition Corp. I, Atlas Air, Inc., and Polar Air Cargo, Inc.
for approval of a transfer of route authority under 49 U.S.C. 41105
Docket OST-01-10239 - 19**

NOTICE PROVIDING ACCESS TO DOCUMENTS

On July 25, 2001, the parties noted above jointly filed the subject application for a *de facto* transfer of the authority held by Polar Air Cargo, Inc., to Polar under the control of Atlas Air Worldwide Holdings, Inc. (AAWH). Gemini Air Cargo, Inc., and Evergreen International, Inc., both U.S. certificated air carriers, filed answers opposing the *de facto* transfer of certain of Polar's route authority.

Subsequent to the filing of the transfer application, the Joint Applicants submitted various documents in support of the application. Certain of these documents were accompanied by motions under 14 C.F.R. 302.12 (Rule 12) of our regulations requesting confidential treatment.¹ The Joint Applicants maintain that the documents for which confidential treatment is sought are proprietary, commercially sensitive, and confidential in nature and, therefore, qualify for being withheld from public disclosure.

¹ Under Rule 12, the Joint Applicants (either singly or in combination) filed requests for confidential treatment (on the dates noted) for the following documents: (1) October 1--Exhibit B which contains Schedule 6.2(g) addressing officer resignations at closing and Schedule 5.4 consisting of an internal Polar analysis of reduction in workforce; (2) October 1--Exhibit D which contains Schedule 3.13(a) consisting of certain historic Polar financial data, Schedule 3.13(b) consisting of an interim Polar financial document, Schedule 3.20(a) consisting of a list of Polar aircraft leases with financial terms, and Polar's 2000 audited financial statements; (3) October 1--Exhibit H which contains Schedule 3.16 consisting of a list of outstanding Polar litigation; (4) October 1--Exhibit F which contains the Hart-Scott-Rodino (HSR) filing of AAWH; (5) October 1--Polar's submission of the HSR filing of its ultimate parent, General Electric Company, and the Federal Trade Commission letter terminating the HSR review; (5) October 9--Exhibit L which contains Polar projected financial statements; and (6) October 10--Certain HSR-related documents that were inadvertently omitted from Exhibit F filed October 1.

On October 11, 2001, Gemini filed a motion requesting that it be granted limited access to certain of these documents in order to ascertain whether any of the information contained therein related to the transfer of Polar's U.S.-Brazil route authority. Specifically, Gemini requests that it be granted access to the documents dealing with Polar officer resignations/workforce reductions and the HSR filings using the Department's standard affidavit procedure under which a person seeking access submits an affidavit agreeing to use the information only for the proceeding at hand and not to disclose the information to any person who has not also signed a confidentiality affidavit.

On October 15, 2001, the Joint Applicants filed a response to Gemini's motion for access. The Joint Applicants state that, as a general matter, they do not believe the subject documents contain any material relevant to the U.S.-Brazil issue. Nonetheless, the Joint Applicants state that they will not object if the Department allows authorized representatives of the appropriate entities to examine the documents identified by Gemini in its motion, provided that procedures adequate to protect these documents from further disclosure are utilized. The Joint Applicants state that, this means that (1) the standard Department procedures related to such access are utilized, (2) no one, other than a current party to Docket OST-01-10239, be granted access, and (3) such access is limited solely to the documents identified in Gemini's motion.

The Department has not yet reviewed the subject documents with respect to the question of confidentiality.² However, consistent with the Joint Applicants' consent and in order to afford parties of interest in this docket prompt access to these documents, we will grant, under conditions set to maintain appropriate confidentiality, immediate interim access to the documents listed below by Gemini and Evergreen, the two parties that have filed timely answers to the application at issue. To obtain access to the documents identified, these parties must provide an affidavit that states, at a minimum, that (1) the affiant is counsel for Gemini or Evergreen, or an outside independent expert providing services to one of these carriers; (2) the affiant will use the information only for the purpose of participating in this proceeding; and (3) the affiant will disclose such information only to other persons who have filed a valid affidavit in the this proceeding. Affiants and other interested parties must understand and agree that any pleading or other filing that includes or discusses information contained in the covered documents must itself be accompanied by a Rule 12 motion requesting confidential treatment. Affidavits must be filed in Docket OST-01-10239 with the Department of Transportation, Dockets, Room PL-401, 400 Seventh Street, S.W., Washington, D.C., 20590.

Affiants having filed affidavits may examine the listed documents at the Department of Transportation at the Dockets location. The documents that may be viewed under these procedures are limited to (1) Exhibit B filed October 1, (2) Exhibit F filed October 1, (3) Polar's October 1 filing of certain HSR documents; and (4) the October 10 filing of certain HSR documents omitted from Exhibit F filed on October 1. Affiants must present a stamped copy of the affidavit filed with the Department of Transportation before examination of the documents.

² We will rule on the merits of these Rule 12 motions subsequently.

All other documents previously submitted by the Joint Applicants under Rule 12 will not be releasable under the procedures established in this notice. Further, if the Joint Applicants make subsequent Rule 12 filings in this docket, those documents are also not releasable under the terms of this notice. A party interested in access to such documents must file a motion requesting access that is specific to such documents and the Joint Applicants may respond accordingly.

We will serve a copy of this notice on each of the parties in this proceeding.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

Dated in Washington, DC October 19, 2001

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>*