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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKET SECTION
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Application of

GEMINI AIR CARGO, LLC

for a certificate of public convenience and necessity
for interstate all-cargo scheduled and charter air
transportation pursuant to 49 U.S.C. § 41102

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Application of

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ANSWER OF ATLAS AJR, INC.

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June 10, 1996

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ANSWER OF ATLAS AIR, INC.

I. Introduction

Gemini Air Cargo, LLC (“Gemini”) has been holding out air carrier service for several months under a very unusual operating arrangement and now seeks certificates to provide scheduled and charter air service in its own right. From the public’s perspective, Gemini’s original applications were materially incomplete; its recent, grudging disclosures have not cured this defect fully. Documents made available to date, however, describe recent Gemini activities that should be scrutinized for compliance with Gemini’s limited exemption authority. Further, the sketchy public information Gemini has provided concerning its ownership and ultimate management structure still is not sufficient to demonstrate that Gemini is and will remain a U.S. citizen. In fact, the complex, secretive

nature of Gemini's ownership demands further information concerning Gemini's *ultimate* owners and reporting requirements to identify changes in its ownership.

Atlas Air, Inc. ("Atlas") is concerned that all U.S. air carriers providing wet-lease, all-cargo service enjoy a "level playing field." Gemini's entry into the air cargo business and applications in these dockets have been less straightforward. Accordingly, Atlas urges the Department to review the fitness issues Atlas has been able to identify to date, to accept additional, public comment on Gemini's applications if necessary, and, should the Department issue Gemini certificates, impose a reporting condition relating to changes in Gemini's ownership, as discussed in detail below.

II. The Department Should Review Gemini's Compliance with Regulatory Requirements

Gemini's sale of wet-lease air cargo services to foreign flag carriers despite Gemini's failure to hold DOT and FAA authority to operate as a **direct** air carrier is unusual, if not unique. As the Department recognized in *&dining* to disclaim jurisdiction over Gemini's operations, Gemini does not act as a mere broker. It purports to rely on a certificated air carrier, Sun Country Airlines ("SCA"), to operate, crew, and insure aircraft that Gemini owns and maintains. Gemini markets wet-lease service to foreign carriers. The Department granted Gemini limited exemption authority in Order 96-1-39 to purchase air transportation only from SCA and to resell it only to Swissair.

Gemini has done little, however, to describe to consumers the true nature of its economic authority and its relationship with SCA. For some unarticulated and incomprehensible reason, Gemini continues to claim confidential treatment for the “brief narrative history of the company” required by 14 C.F.R. § 204.3(r) and a discussion of **SCA’s** operations. Gemini’s attempt to shroud in secrecy past operations under the limited exemption authority issued by the Department lends an air of incredulity to its application.

Gemini’s *public* disclosures suggest that it may be holding out service as a direct air carrier in violation of 49 U.S.C. § 41101 and 14 C.F.R. Part 121. Included as Exhibit GEM-203 is a picture, released to the press, of a DC-N-30 in Gemini, not SCA, livery. Similarly, Gemini press releases picked up by trade press, see Exhibit GEM-700, contain statements which clearly give the impression that Gemini, and not an airline such as SCA, is holding out all-cargo operations to the public. For example, its February 23, 1996 press release describes Gemini as “a newly established air cargo carrier,” discusses Gemini’s freighters, indicates that it will place a third aircraft “in service,” and states that “these **DC-10-30F’s** are available to other carriers on an ACMI (aircraft, crew, maintenance & insurance) lease or limited charter contracts.” Similarly, in a release dated April 1, 1996, Gemini “announced an agreement with World Airways for DC-10 service between the U.S. and Korea,” and in a release dated April 4, 1996, Gemini announced that they “had renewed their ACMI (aircraft, crew, maintenance & insurance) with **Swissair** Cargo” and that “[t]hree converted freighters are currently under contract with Swissair, British Airways, Fast Air and World Airways providing a sub-service for **Asiana** Airlines.” The attached article, which

appeared in the May 1996 edition of Air Cargo News, shows an aircraft in Gemini livery, refers to Gemini as a “snazzy new ACMI operator,” and states that Gemini DC-10s are available on an “ACMI.. .or limited charter basis. ” Gemini even includes a telephone number, ostensibly for inquiries about air service.

Although SCA is supposed to be providing the actual transportation, Gemini seems to avoid references to SCA. It appears that Gemini, not SCA, may even sign wet lease contracts directly with “client” airlines, just as an operating airline like Atlas does when it provides subservice for its airline clients. This interposition of Gemini between SCA, the airline purportedly operating Gemini’s service, and ultimate wet lessees conceivably could implicate the FAA’s wet lease regulations at 14 C.F.R. §§ 119.53 and 121.6. It certainly reinforces the view that Gemini carries itself as an operating cargo airline and not merely as an indirect air carrier.

Under **Order** 96-1-29, the Department must approve arrangements between Gemini and airlines other than SCA and Swissair. In Exhibits GEM-607 and GEM-608 Gemini asserts that it has received approval for certain **SCA/Gemini** flights sold to Swissair, Lufthansa and Florida West Airlines. Gemini press clips filed in Exhibit GEM-700 indicate that Gemini also has contracted with British Airways, **Asiana** Airlines of Korea, and Fast Air of Chile. In reviewing other Department approvals for Gemini operations, Atlas has found no mention of **Asiana** or Fast Air. However, Gemini *has* applied for authority to operate U.S. -Korea service for World and U.S.-Chile service for Florida West, suggesting that Gemini is inserting still more parties in its wet-lease arrangements.

Gemini's marketing and operating activities appear unduly complex and confusing. These activities, as well as the apparent holding out of air transportation by Gemini, raise substantial questions about Gemini's compliance with its limited exemption authority, and Atlas urges the Department to consider Gemini's compliance carefully.

III. Newly-Supplemented Ownership and Management Information Does Not Answer Basic Fitness Issues

Gemini originally excluded a wealth of important fitness details from the applications it made available to the public. **Only** after Atlas demonstrated on May 2, 1996 that Gemini's motion for confidential treatment was legally insufficient did Gemini release additional fitness **information.**^{1/} Nonetheless, Gemini's applications still do not provide sufficient, public information concerning its ownership and management structure. Further, the complexity of the ownership structure Gemini has disclosed warrants Gemini's further, public disclosure regarding Gemini's ultimate ownership and, should Gemini be certificated, a reporting condition relating to ownership to indicate changes in ultimate ownership.

Gemini still has not provided publicly the identity and citizenship of its ultimate

^{1/} Gemini claims to have provided all information it believes **necessary** for public review. Nonetheless, the public docket still does not disclose the scope of its revisions to exhibits already filed with the Department, its rationale for withholding other exhibits, and the status of its original, unrevised exhibits. Atlas renews its May 2, 1996 objection to Gemini's motion for confidential treatment, as Gemini still has not described with particularity the justification for continuing to keep particular documents confidential. Atlas urges **the** Department to rule on Gemini's motion for confidential treatment and Atlas' opposition promptly to ensure an appropriate public record in these proceedings.

owners. Interestingly, none of Gemini's officers and directors holds any voting interest in the applicant; Mr. Stockbridge holds only 0.2% of non-voting equity (other non-voting equity holders, if any, are not identified). Rather, Gemini indicates that it is owned almost entirely by two Jet Air Cargo Holdings companies ("Jet" and "Jet **II**") -- notably, Gemini's ownership already has changed since the Department issued Order 96-1-39 -- and controlled by Potomac Financial Group, LLC ("PFG") and **Oaktree** Capital Management, LLC ("Oaktree"). Gemini indicates that Jet and Jet **II**'s equity percentages, totaling 99.8% are voting, but does not explain whether this percentage reflects their actual voting power and who else can vote Gemini stock. Exhibit GEM-105 (Revised) and later Gemini letters to the Fitness Division indicate that **Oaktree** and the "majority **stockholder[s]**" of Jet and Jet **II** typically act as general partners of closed-end limited investment partnerships. Gemini's heavily-laden ownership chart identifies additional entities -- OCM Opportunities Fund, TCW Special Credits Fund V, and TCW Asset Management Company ("TAMCO") -- for which Gemini has not provided sufficient, public information. Interestingly, while Gemini claims that all OCM limited partners are U.S. citizens, it makes no similar claim for the TCW Fund, a partnership which holds a controlling interest in Jet, and which if found to contain non-U.S. citizen partners, would preclude Gemini for meeting the citizenship requirement.

The Department should require *public* disclosure of additional information concerning the sources of capital in these funds and the nature of Oaktree's and **TAMCO**'s relationship and commitment to the fund investors and to Gemini. **Oaktree** appears to bears substantial control over fund assets and presumably seeks to maximize investment return on those assets.

Atlas expects that Oaktree's ultimate duty to the fund investors is superior to its commitment to fund Gemini should better investment opportunities appear. Atlas also expects that TAMCO, for which Gemini has provided no information, has similar commitments. To Atlas, sifting through Gemini's sparse disclosure, it appears that continued investment in Gemini by the same ultimate owners, and a continued relationship with **Oaktree** and TAMCO, cannot be assured. Only a thorough examination of the fund management agreements can reveal the nature of Oaktree's and **TAMCO's** obligations to the fund investors and, therefore, the strength of the commitment to Gemini. Accordingly, Atlas urges the Department to consider imposing a special certificate condition on Gemini, should it be certificated, to require prompt notification of changes in its ownership structure at **all** levels.

Gemini also does not disclose in sufficient detail the management functions dispersed among PFG, **Oaktree**, and their various principals, as well as various "short-term consultants," as Gemini describes these personnel in Exhibit GEM- 103. Gemini indicates in its revised Exhibit GEM-103, at 2 (emphasis added), only that "it is planned that Gemini will employ *some* of these consultants upon completion of the Part 121 process." The Notes to Gemini's Financial Statements state that the PFG agreement "to handle various duties including operations, sales and marketing" for Gemini is effective through September 15, 1998. Exhibit GEM-402 at 6. Atlas expects that Oaktree's principals -- who understandably would wish to control their clients' multimillion dollar investment -- also will participate in management, but Gemini does not discuss Oaktree's involvement in the proposed direct air

carrier.

Finally, Gemini does not address the nature of its future relationship with SCA should the Department grant Gemini certificate authority. **Exhibits** GEM-104 and GEM-501 indicate that Gemini aircraft will remain with SCA for some time -- interestingly, SCA recently applied for all-cargo authority between the U.S. and Hong Kong. Gemini offers two sets of forecasts -- one for "all operations," Exhibits GEM-303, 304, and one for Gemini-only operations. Exhibit GEM-41 1. It is not clear whether Gemini, if certificated, intends to sell direct air transportation *and* air transportation operated by SCA at the same time under the Gemini name. This would only heighten the potential for consumer confusion inherent in Gemini's current activities.

IV. Conclusion

Gemini's history and applications highlight the need for close scrutiny of Gemini's past operations and activities, its ownership structure, and, thus, its proposal for direct air carrier operations. Atlas Air, Inc. respectfully urges the Department to review Gemini's compliance record and citizenship carefully, to disclose all information filed by the applicant that cannot properly be held confidential, to permit additional, public comment on Gemini's

applications if necessary, and, should Gemini be certificated, impose on Gemini the requirement that it report to the Department changes in ultimate ownership.

Respectfully submitted,



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PUMPING TRAFFIC

News and Opinion

Snazzy New ACMI Operator



New livery of Gemini Air Cargo DC-10-30 freighter, one of six DC-10-30s that will enter operation (three currently on line) is pictured at delivery. Early last month Gemini began servicing routes under an agreement with World Airways to provide sub-service for Asiana from New York's JFK to Seoul, Korea thrice-weekly, reports Gemini's Marketing Manager Martin Ladimer.


"Recently we renewed our ACMI contract agreement with Swissair. Base of that aircraft's operations moves from the U.S. to

Swissair cargo's hub in Basel Switzerland. Conversion of the other three DC-10s is underway. In addition to the aforementioned, currently we are providing contract service for British Airways and Fast Air."

Gemini fired up operations last September with in excess of \$100 million in equity capital managed by Oaktree Capital Management and Lehman Brothers. The DC-10s are available on an ACMI (aircraft, crew, maintenance and insurance), or limited charter basis. (703) 391-2775.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 10th day of June, 1996, caused the attached Answer of Atlas Air, Inc. to be served by first class mail, postage prepaid, on the parties on the attached service list.


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