

## POSITION PAPER

Re: HR 14623/S 3684  
Bills to broaden the exemption powers of  
The Civil Aeronautics Board  
Regarding the promotion of all-cargo air service

### BACKGROUND

The air transport industry continually predicts cargo will surpass passengers as their primary source of income. Although cargo business has expanded, the record of the certificated carriers in providing an expanded cargo service contradicts their predictions.

- Five of ten trunk carriers have ceased or are eliminating all-cargo services.
- No local service carrier provides any all-cargo service.
- Only 21 domestic airports now receive all-cargo service by certificated carriers.
- Combination carriers providing all-cargo service have not shown an operating profit since fiscal 1967 in domestic operations.
- Shipments which really need nighttime service are being forced to move on daytime passenger flights because all-cargo available ton miles have decreased by 50% since 1970.

Because of the obvious need to provide the public and small communities with better all-cargo service, Federal Express Corporation was founded in 1973 to provide the nation's economy with overnight small shipment service and now provides that service to 130 major U. S. cities and 10,000 smaller communities. Operating with 41 aircraft having a maximum payload of 6,000 lbs. and more than 500 small radio-equipped trucks, Federal Express provides assured overnight service to 32,000 shippers and others carrying critical medical supplies and drugs, electronics, computer parts, aircraft spares and production components. It is the only airline founded for the specific purpose of transporting critical goods. Shippers now have an option to the limited-cities service offered by certificated airlines and freight forwarders.

The key to the success of Federal Express is its hub and spoke route system which is similar to a bank clearing house, with all flights going through Memphis where packages are off-loaded, sorted by destination and loaded onto outbound airplanes within three hours.

This system has allowed Federal Express to achieve remarkable service levels. In fact, 93.7% of all deliveries are made to consignees' doors by noon the day following pickup and 99.8% are delivered the next day. And this service is provided between all cities on the Federal Express system, not just between major cities which happen to have good passenger service. In an independent survey conducted by Opinion Research Corporation, the leading air freight forwarder achieved only a 43% "next day" record.

#### PROBLEM

Because Federal Express now provides this unique service, its airplanes are flying at capacity. This shipper demand is forcing Federal Express to fly its small aircraft wingtip-to-wingtip between major cities which wastes 30,000 gallons of jet fuel daily and increases maintenance and manhours. The annual cost of the inefficiencies of the multiple flights on the heaviest routes is almost \$9 million. Since small airplanes must be flown en masse on long haul routes, critical air express service is being denied to smaller cities where these same small aircraft could be more efficiently utilized.

Federal Express cannot fly large cargo aircraft such as the McDonnell Douglas DC-9 or Boeing 727 because the Federal Aviation Act of 1938 does not permit the Civil Aeronautics Board to grant any relief to a new carrier pending the long (2-5 years) certification process. Federal Express recently asked the CAB for authority to operate five DC-9's but this relief was denied because under present law, Federal Express — though an all-cargo carrier — must undergo the lengthy certification process required of passenger airlines.



Without immediate relief, Federal Express' overall operation will be jeopardized, with no hope of expanding a successful, critically-needed service. Without larger aircraft, the company cannot meet shippers' demands, nor expand its service to hundreds of small communities now without overnight service.

### PROPOSED LEGISLATION

CAB has acknowledged that its exemption power is severely restricted, precluding it from granting an exemption except in very limited circumstances. Because of the lengthy, complex certification process, CAB cannot meet the needs of a dynamic, changing airline industry, particularly for domestic all-cargo operations, which — with the exception of Federal Express — have been steadily declining over the past few years. The Bills would give the CAB additional flexibility to authorize relief by exemption, pending the lengthy certification process, to any all-cargo airline whose development would be impeded or destroyed by the inherent delays in the normal certification process.

### PROS AND CONS

The certificated airlines, including Flying Tigers, oppose any expansion of the CAB's exemption authority and allege that:

1. The basic intent of the Federal Aviation Act would be abridged if this Bill were enacted. I would commend those who use this argument to reflect that the basic "intent" of the Act was to promote the public interest not any specific segment of the aviation community. In any event, the basic certification mechanism is not only maintained, it is mandated by any carrier petitioning under the revised statute. Moreover, these extraordinary powers are being extended to the CAB to give them the flexibility to promote a vital, but neglected, area of our air transport system.

2. This Act would favor all-cargo and exempt carriers. It does not favor all-cargo carriers — it promotes all-cargo service, which has been disastrously reduced. Nothing prohibits the grant of such authority to combination carriers for all-cargo service. As to exempt versus certificated carriers this can be changed by substituting the word "initial" for "an initial certificate or an amendment to an existing certificate" thus making the only determinant the CAB's decision that such authority is in the public interest.
3. Some carriers might be unfairly advantaged by not having reporting or tariff filing requirements imposed by the Board. Federal Express has no objections to these requirements being incorporated into S-3684 as a precondition of the granting of any such exemption.
4. The Board's power might be used to grant an exemption to a carrier which was unfit, especially an exempted carrier. Moreover, exempt carriers could be granted an exemption for conduct of new operations which would be unfair to others operating on the route, or unfair to certificate holders who had previously attempted to get such authority. These concerns can be easily overcome by requiring an exempted carrier to have proven both public need and fitness by its historical operations using a ton-mile formula. Moreover, such exemption authority under the new statute could be restricted to those points previously served by the exempted carrier.
5. This Bill might allow exempted carriers to engage in charter operations similar to those currently being adequately provided by Supplemental carriers. The Bill could specify that its applicability was restricted to scheduled, common carrier operations in interstate transportation.



6. Grant of an exemption by the CAB and subsequent carrier investment in equipment would mitigate against the denial of the requested certificate. Neither the CAB nor Congress has any responsibility to protect private capital from risk. If a company suffered such consequences, it would be due solely to the CAB's judgment that the "public" interest was not being served, thereby showing the initial risk to have been unjustified and quite rightly then — unrewarded. This doctrine is invalid except as a rhetorical impediment to stifle improved all-cargo service.
7. This legislation would be a disincentive for rapid CAB processing of a Certificate application. First, the CAB has generally never moved "promptly" on certificate applications. Moreover, this relatively minor power is to be conferred on the CAB to correct an extraordinary problem — the systematic reduction and elimination of important all-cargo service. This legislation, in light of the record of all-cargo service is designed to correct a clear deficiency in the nation's air transport system which has been largely abandoned by the certificated combination carriers. It is also logical that the CAB would move promptly to end the exemption status by award or denial of the pending certificate application.
8. S-3684 is too broad in that aircraft of unlimited size may be used by the exempted carrier. Federal Express would support limiting the aircraft that could be utilized pursuant to this exemption to the smallest jet which is commonly found in cargo configuration, the B-727-100 C. A payload restriction of 50,000 pounds would thus insure that no potential applicant would be barred, de facto, by the sheer lack of equipment.

9. This Bill does not recognize the years of effort of some carriers who have been denied applications at the CAB. This legislation addresses today and the future, correcting an historical problem, it cannot redress the grievances of the past.

#### SUMMARY

The present regulatory system is:

- Denying the United States an efficient, dependable system to transport high priority items.
- Thwarting expansion of a proven system which could provide critically-needed service to hundreds of small communities not served by certificated all-cargo airlines.
- Forcing rates upward.
- Wasting fuel.
- Sapping the resources of a young company and its 2,153 employees stationed across the nation.

Enactment of these Bills would:

- Provide the Civil Aeronautics Board the flexibility needed to again foster expansion of the nation's vital air cargo system.
- Provide expanding all-cargo airlines possible emergency relief pending certification.
- Specifically provide Federal Express the opportunity to offer more overnight service to new cities in almost every state and better serve the shipping and general public.
- Permit lowering — or at least maintaining — rates.