



U.S. Department of
Transportation

General Counsel

400 Seventh St. S.W.
Washington, D.C. 20590

AUG 8 1995

Mr. V. Michael Straus
1001 Connecticut Avenue, N.W.
Suite 335
Washington, D.C. 20036-5544

Dear Mr. Straus:

This is in response to your request for my interpretation of the federal preemption provision, Section 105, of the Federal Aviation Act of 1958, as amended, (Act) as it may apply to state laws (specifically that of the Commonwealth of Pennsylvania) regulating the entry, routes, rates, and services of indirect air carriers. You stated that your client, Network Courier Service (NCS), is an indirect air carrier (which had been classified as an airfreight forwarder by the Civil Aeronautics Board). It offers the service of carriage of packages by air, with courier pick-up and delivery (PUD) service at each end, or by substitute surface carriage where necessary. NCS does business nationwide and was required by the Pennsylvania Public Utility Commission to file an application for a motor carrier certificate of public convenience and necessity. (66 Pa. C.S.A., Subpart C, Regulation of Public Utilities).

It is my opinion that Section 105 preempts Pennsylvania's requirements relating to the "rates, routes, or services" of air carriers having authority under Title IV of the Act. Additionally, Section 105 would preempt other state laws similarly seeking to regulate the rates, routes, or services of such air carriers.

Section 105 was enacted as part of the Airline Deregulation Act of 1978 (ADA), whose policy was to loosen economic regulatory restraints over air carriers and to rely, to the maximum extent possible, on the competitive marketplace to provide efficiency, innovation, and low prices in domestic passenger air transportation. Congress had deregulated all-cargo air transportation the prior year, by Public Law 95-163, 91 Stat. 1281. A major purpose of the federal preemption provision is to protect Title IV air carriers from any increased state economic regulation that may attempt to fill the hiatus left by reduced federal regulation under these statutes.

An indirect air carrier such as Network Courier Service is covered by this section since it has exemption authority under Title IV. (See 14 C.F.R. Part 296 and 14 C.F.R. 399.110(c)). Additionally, the services NCS performs are included within the scope of Section 105, since this provision applies to those areas within the jurisdiction of the former CAB. Specifically, the

Mr. V. Michael Straus

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Board had the jurisdiction to regulate the activities of air freight forwarders, including their pick-up and delivery services and charges (within the 35-mile airport zone), as services "in connection with" air transportation. Accordingly, such services performed by indirect air carriers, as well as their rates and routes, would be preempted from state regulation by Section 105.

We agree with you that, with the passage of the Motor Carrier Act of 1980 (specifically the exemption from Interstate Commerce Commission jurisdiction of surface carriage in connection with air transportation), federal regulation of domestic intermodal (air and surface) cargo services has been eliminated. This supports our conclusion that Section 105 preempts a state from regulating the rates, routes, or services of indirect air carriers with Title IV authority.

Sincerely,

Original signed by
Jim J. Marquez

Jim J. Marquez
General Counsel