

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
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**U.S.-THAILAND ALL-CARGO FREQUENCY
ALLOCATION PROCEEDING**

**Docket OST 96-
1496**

Applications of

AIR MICRONESIA, INC.

Docket OST 96-1293

POLAR AIR CARGO, INC.

Docket OST 96-1292

for certificate of public convenience and necessity under
49 U.S.C. section 41102 to engage in scheduled all-cargo
service, route integration authority, and for allocation of
frequencies (U.S.-Thailand)

Applications of

FEDERAL EXPRESS CORPORATION

Docket OST-96-1291

NORTHWEST AIRLINES, INC.

Docket OST-96-1090

UNITED PARCEL SERVICE CO.

Docket OST-96-1294

for allocation of frequencies (U.S.-Thailand)

Application of

AIR MICRONESIA, INC.

Docket OST 96-1050

for an exemption pursuant to 49 U.S.C. section 40109 to

engage in scheduled all-cargo service, and for allocation of frequencies (U.S.-Thailand)

ORDER INSTITUTING PROCEEDING

SUMMARY

By this order we institute the **U.S.-Thailand All-Cargo Frequency Allocation Proceeding**, to select U.S. carriers to provide all-cargo services in the U.S.-Thailand market. We consolidate into this proceeding the captioned certificate and frequency allocation applications of Air Micronesia, Federal Express, Northwest, Polar, and United Parcel Service.

BACKGROUND

On May 8, 1996, the United States and the Kingdom of Thailand signed a new Air Transport Agreement, and a Memorandum of Understanding (MOU). The Agreement provides for unlimited designations of carriers for both combination and all-cargo service. The MOU addresses capacity, providing for unlimited nonstop and blind sector services by combination carriers, and allowing the airlines of each Party to operate a total of thirty-one weekly round-trip combination frequencies and a total of twenty-four weekly round-trip all-cargo frequencies in the U.S.-Thailand market via intermediate points, with full Fifth Freedom traffic rights. However, no more than fourteen of the thirty-one weekly combination frequencies and fourteen of the twenty-four weekly all-cargo frequencies may be operated via any single intermediate and/or beyond point.

Because Northwest and United Airlines have been and are currently operating seven weekly combination frequencies via intermediate points with full Fifth Freedom traffic rights, and in all-cargo service Federal Express and Northwest have been and are currently respectively operating one and two frequencies, there remain seventeen weekly combination frequencies and twenty-one all-cargo frequencies for allocation.

By notice served April 8, 1996, the Department notified all certificated U.S. air carriers of these opportunities in the United States-Thailand market and invited interested U.S. carriers to file applications for frequency allocation.

APPLICATIONS

No U.S. carrier filed an application for allocation of new combination frequencies.

Air Micronesia, Federal Express, Northwest, Polar, and United Parcel Service submitted allocation applications for a total of twenty-five all-cargo frequencies - four more than those to which U.S. carriers are entitled to under the MOU.

Air Micronesia proposes seven weekly (initially five frequencies, with an increase to seven at a later, unspecified date) using narrow-body aircraft routed Guam-Palau-Manila-Bangkok. Federal Express proposes five new frequencies between Anchorage or Oakland-Subic Bay-Bangkok-Penang-Bangkok-Subic Bay with A-310 aircraft (in March 1997, FedEx plans to reroute these and its current service to an Indianapolis-Paris-Dubai-Bangkok-Subic Bay service). Northwest proposes one additional 747-F service on its current twice weekly U.S.-Tokyo-Singapore-Bangkok service, and four new 747-F roundtrip frequencies U.S.-Tokyo-Bangkok-Hong Kong-Tokyo. Polar Air Cargo proposes two weekly 747-F flights routed New York-London (without Fifth Freedom traffic rights, which are prohibited under the U.S-Thailand Agreement)-Amsterdam-Dubai-Delhi-Bangkok-Hong Kong-Khabarovsk-Anchorage-Chicago-New York. United Parcel Service proposes six weekly 757-200 or 727-QF services routed Anchorage-Seoul-Taipei-Manila-Bangkok-Kuala Lumpur-Singapore-Taipei-Osaka-Anchorage.

Federal Express, Northwest, and United Parcel Service each already hold exemption and/or certificate authority to engage in foreign air transportation of property and mail in the U.S.-Thailand market. Air Micronesia's and Polar Air Cargo's applications for frequency allocation also include requests for certificate authority and route integration authority for their proposed Thailand services.

RESPONSIVE PLEADINGS

Several of the applicants filed answers specifically addressed to applications filed by Air Micronesia and Northwest before issuance of our April 8 Notice. Commentors urged the Department to defer action on the applications until the Department issues a Notice to all U.S. carriers requesting applications for allocation of frequencies and/or the Department establishes a comparative selection proceeding concerning all U.S. carrier frequency requests. Our Notice and the establishment below of this proceeding render these responsive pleadings moot.¹

Each of the applicant U.S. carriers filed a consolidated answer to the applications of the other U.S. carriers. The answers generally deal with the need for the Department to establish further procedures because the frequency allocation requests exceed the number available under the MOU, and/or the merits of the various other applications, with each applicant asserting the superiority of its proposal over that of the other applicants.

However, in addition to such general comments, certain U.S. carriers filed other comments which the Department must address. Federal Express questions the need

¹ Air Micronesia's initial application in Docket OST-96-1050 requested exemption authority and was filed prior to the Department's Notice soliciting applications. Air Micronesia filed a certificate application (Docket OST 96-1293) pursuant to the Department's Notice soliciting applications. As a result, Air Micronesia's application in Docket OST 96-1050 is moot and we will dismiss it.

for further procedures because Air Micronesia is prepared at this time to operate only five of its requested seven frequencies, and because Northwest may be seeking fewer than five frequencies since both its current and proposed flights serve Thailand in only one direction. This, Federal Express speculates, could reduce the total number of frequencies requested by all U.S. carriers to a level within the maximum set forth in the MOU. However, Northwest has indicated that while its current and proposed flights indeed only serve Thailand in one direction, it both on-loads and off-loads cargo in Thailand on each flight. Accordingly, we see no basis to determine that Northwest's frequency allocation request is for anything less than for five flights, with traffic rights into and out of Thailand. This still leaves us in a position of having more frequency allocation requests than are available under the MOU, irrespective of whether we were to treat Air Micronesia's request as being for five and not seven frequencies.

Assuming further Departmental procedures are required, Federal Express urges that the U.S. carrier requests be set for an oral evidentiary hearing before an Administrative Law Judge. United Parcel Service urges the Department to proceed to an immediate decision on the applications based on the current record. The remaining applicants acknowledge that further procedures may be necessary. Some support non-hearing show-cause procedures as used in other cases; others do not specify what procedures should be used. We address the issue of further procedures below.

DECISION

The new Air Transport Agreement and MOU with Thailand make available valuable new opportunities for U.S. carriers to provide scheduled all-cargo services between the United States and Thailand. Therefore, we have decided to institute the **U.S.-Thailand All-Cargo Frequency Allocation Proceeding**, to allocate to U.S. carriers the twenty-one available all-cargo frequencies.

As we have previously solicited applications for this authority, we will not provide a further opportunity for U.S. carriers to file applications. We will consolidate the frequency allocations applications filed by Air Micronesia, Federal Express, Northwest, Polar and United Parcel Service.

Whether it is consistent with the public interest for the Department to grant U.S. carriers the underlying certificate authority and to allocate frequencies to serve the U.S.-Thailand market will not be an issue in this proceeding. The additional service opportunities represent valuable rights that were obtained through negotiations in exchange for operating rights for Thai carriers. The public interest clearly calls for use of these rights.

Consistent with our practice in other proceedings, the allocation of frequencies in this case will be for a period of one year, and will be subject to a 90-day dormancy condition. Any certificate authority awarded in conjunction with this allocation will be in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41110. In accordance with our regulations governing the

duration of certificate authority in limited-entry markets,² the duration of authority shall be limited to five years. Consistent with our practice in competitive proceedings, we will subject the authority awarded (both the frequency allocation and certificate authority to operate on a route) to a start-up condition, the duration of which will be determined by the record of this proceeding.

In selecting U.S. carriers for this authority our primary objective will be to maximize the public benefits that will result from award of this authority and enhance the competitive environment in the U.S.-Thailand cargo market. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the shipping public. We will also consider the effect of the applicants' service proposals on the overall market structure and level of competition in the U.S.-Thailand market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In this regard, we will consider, among other things, route integration, which refers to a carrier's ability to flow freight to and from points behind its proposed hub or gateway. Flow and feed capability support the viability of a carrier's proposed service and also affect the overall number of potential customers who might benefit from that service. In addition, we will consider other factors historically used for carrier selection where they are relevant.

PROCEDURES AND TIMETABLE

It is our policy to tailor our procedures to the scope and complexity of the issues before us. We believe that written, non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750) are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. Consistent with the provisions of Section 302.22a(d) of our regulations, the Department's Senior Career Official will be the DOT decision-maker in this case. Federal Express has presented no material facts at issue that require oral evidentiary procedures before an Administrative Law Judge. We are also unpersuaded by United Parcel Service's suggestion that there is already sufficient information on the record for us to select among the applicants in this proceeding. Indeed, to the contrary, the applicants have provided little information with respect to their proposals, and we conclude that in this case additional information is necessary for us to make our selections.

In order to develop a comparative basis for selecting among the applicants in this proceeding, we will require submission of certain evidentiary information. We expect all applicants to comply fully with the evidence request and evidentiary procedures established in this order. An applicant's failure to do so could bear negatively on the consideration accorded to that applicant's evidentiary submissions. Furthermore, depending on the circumstances, it could lead to nonadmission of those submissions or even to that applicant's disqualification from this proceeding. In addition, the

² 14 CFR 399.120.

Department will make certain information available to the parties to facilitate preparation of their proposals.

APPLICANT EVIDENCE (DIRECT EXHIBITS)

Each applicant should submit the following information for the forecast period - the twelve months ending December 31, 1997. Submissions should contain specific information so that further clarification is unnecessary. The sources and methodology used for all traffic estimates should be clearly explained.³

1. Proposed schedules, showing start-up dates, complete routings from origin to destination of all flights, and the schedule integration of the proposed service with other services operated (either in the U.S.-Thai market or other markets), days scheduled, equipment types and cargo capacity, schedule variations by day and/or, traffic season, *etc.* if applicable.
2. Based on the proposed schedules, a cargo traffic forecast in both revenue tons and ton-miles, by service segment, by direction, for the proposed U.S.-Thailand single-carrier services, indicating the data source of all traffic projections.⁴ This should include separate traffic estimates for:⁵ (a) single-plane U.S.-Thailand and single-plane U.S.-third country traffic to be carried; (b) behind-gateway traffic (excluding single-plane traffic) (*i.e.* U.S.-Thailand; U.S.-third country), by direction, that the applicant expects to flow over the proposed U.S. gateway(s) or any single-plane behind gateway points to be served, and the source of such estimates; (c) any third country-Thailand traffic which would be carried on the proposed service (*e.g.* individual markets in South America-Thailand); and (d) any third country - third country traffic that would be carried on the proposed service (*e.g.* individual markets in South America-individual markets in Southeast Asia (other than the gateway in Thailand)). Forecasts should also specify the capacity available on the proposed services for U.S.-Thailand and U.S.-third country, third country-Thailand, and third country-third country traffic and the percentage of express/small package and general air freight expected to be carried. If mail is expected to be carried, this should also be shown separately.
3. A statement as to whether the aircraft to be used in the proposed schedule(s) are: a) on hand; and/or b) on order. If on hand, indicate where, and the extent to which such aircraft are currently being used. If on order by purchase or lease, indicate when

³ All data and responsive information must be given in pounds/tons. An applicant may choose, in addition, to present evidence using other units of measure; however, it must provide the data in the standard measure for comparative purposes.

⁴ Applicants should specify the payload capacity used based on the stage lengths and full routings involved in determining the estimates.

⁵ The base year for traffic forecasting purposes should be the twelve months ended December 31, 1995. The forecast year is the twelve months ending December 31, 1997.

the aircraft will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate specific plans for achieving compliance.

4. For each U.S.-Asia/Pacific market that the applicant has authority to provide scheduled all-cargo service, provide the number of scheduled flights operated by direction, by month, for the period January 1, 1995 December 31, 1995.

5. A statement as to whether the applicant, if allocated frequencies, would accept a condition on the authority requiring service by a date specified by the Department, and if so, what start-up period should be imposed.

6. A statement as to whether the applicant, if not allocated all of the frequencies it desires, would accept and operate an allocation of fewer frequencies, and if so how many fewer.

7. A statement as to whether the applicant's services will be operated in conjunction with any cooperative arrangement (e.g. wet lease, code-share) with any other U.S. carrier or any foreign carrier. If such services are to be operated, a detailed explanation regarding such operations must be provided as well as a copy of the cooperative agreement.

DOT EVIDENCE (DOT INFORMATION RESPONSES)

Pursuant to sections 241.19-6 and 399.100 of the Department's regulations, it is determined that the Department's T-100 data for cargo operations between the United States and Thailand for the period January 1, 1992 through December 31, 1995 are material and relevant to a final determination of the issues in the case. We are releasing those data to the U.S. carrier applicants in this proceeding. Those parties to the proceeding will be free to use those data to the extent they deem necessary in this proceeding.

The Economic & Financial Analysis Division of the Office of Aviation Analysis will make available to the parties the following data, to the extent possible, in the form of information responses:

1. Schedule T-100 and T-100(f) nonstop segment data (scheduled and nonscheduled), including, *inter alia*, belly-cargo traffic, by carrier (U.S. and foreign) by month, by direction, beginning January 1, 1992, through December 31, 1995, between the United States and Thailand.

2. Schedule T-100 and T-100(f) on-flight market data (scheduled and nonscheduled), including, *inter alia*, belly-cargo traffic, by carrier (U.S. and foreign) by month, by direction, beginning January 1, 1992, through December 31, 1995, between the United States and Thailand.

PROCEDURAL SCHEDULE

In order to facilitate a prompt decision in the case we intend to conduct the proceeding here according to the following schedule:

DOT Information Responses ⁶	July 3, 1996
Direct Exhibits	July 19, 1996
Rebuttal Exhibits	August 2, 1996
Briefs	August 16, 1996

All dates indicated are delivery dates. An original and four copies of all submissions are to be received at the Department's Docket Section no later than the dates indicated.⁷ Parties are free to make service by facsimile or by hand.

ACCORDINGLY,

⁶ Due to the volume of the Department's Information Responses, we will be unable to print and distribute copies to each party. One copy of these materials will be made available for the parties' use in Room 4201, 400 Seventh Street, S.W., Washington, D.C. In addition, the Department will issue on request copies of its Information Responses on computer diskettes. Parties who wish to receive such diskette should contact the Economic & Financial Analysis Division at 202-366-2344. Use of the data in the Department's Information Responses (either hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (*i.e.* those that have filed applications or comments) to this proceeding.

⁷ The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system. Carriers should also provide the Department with a computer diskette of all exhibits and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Economic & Financial Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 Seventh Street, S.W., Washington, D.C. 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel (version 5.x or earlier), Lotus 1-2-3 (version 3.x or earlier), Microsoft Work (version 6.x or earlier), or WordPerfect (version 5.2 or earlier) should be filed in their native formats. Parties may also file exhibits or briefs via e-mail to our internet address: dot_dockets@postmaster.dot.gov. Files sent via e-mail should be ASCII (text only) format. Parties using other software may either (1) file exhibits and briefs in the foregoing formats, or (2) contact Michael A. Lane at 202-366-2351 or Mr. Stephen H. Davis at 202-366-1049 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record..

1. We institute the **U.S.-Thailand All-Cargo Frequency Allocation Proceeding**, which will be decided by non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750);
2. The proceeding instituted in ordering paragraph 1 shall include consideration of the following issues:
 - a. which U.S. carriers should be authorized and allocated frequencies to provide scheduled all-cargo services between the United States and Thailand as set forth in the U.S.-Thailand Memorandum of Understanding of May 8, 1996;
 - b. what intermediate and beyond authority, including route integration authority, should be awarded in conjunction with the Thailand frequency allocation awarded in this proceeding;
 - c. what terms, conditions and limitations, if any, should be placed on any authority awarded in this proceeding;
3. We consolidate the applications of Air Micronesia, Inc., in Docket OST-96-1293; Federal Express Corporation, in Docket OST-96-1291; Northwest Airlines, Inc., in Docket OST-96-1090; Polar Air Cargo, Inc. in Docket OST-96-1292, Inc.; and United Parcel Service Co., in Docket OST-96-1294 into the U.S.-Thailand All-Cargo Frequency Allocation Proceeding;
4. We dismiss without prejudice Air Micronesia's application in Docket OST 96-1050.
5. Petitions for reconsideration of this order shall be due no later than four calendar days from the date of service of this order; answers to any petitions shall be due no later than three calendar days thereafter; and
6. We will serve this order on Air Micronesia, Inc.; Federal Express Corporation; Northwest Airlines, Inc.; Polar Air Cargo, Inc.; United Parcel Service Co; the Ambassador of the Kingdom of Thailand in Washington, D.C.; and the Department of State (Office of Aviation Negotiations).

By:

Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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