



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

Issued by the Department of Transportation  
on the 22nd day of August 1997

Served: August 22, 1997

**Applications of**

**NORTHWEST AIRLINES, INC.**

**UNITED AIR LINES, INC.**

**for allocation of all-cargo frequencies under  
the United States-Philippines Air Transport  
Services Agreement (Route 2)**

**Dockets OST-97-2145**

**OST-97-2201**

**FINAL ORDER**

**SUMMARY**

By this order, we make final our tentative decision in Order 97-7-35 and grant Northwest Airlines an allocation of two weekly frequencies to provide all-cargo scheduled service in the U.S.-Philippines market for a period of one year from October 1, 1997.

**BACKGROUND**

U.S. Route 2 of the 1992 U.S.-Philippines Air Transport Agreement provides for scheduled combination service by designated U.S. carriers between any point in the United States and any point in the Philippines. The United States and the Philippines, however, signed a Protocol in 1995, that amended and supplemented the 1992 Agreement and permits U.S. carriers to operate all-cargo services on Route 2 either by converting existing combination frequencies into all-cargo frequencies (but not back again to combination) or using new frequencies that become available based on an agreed timetable. The United States can designate only three U.S. carriers for Route 2, and we have designated Continental Micronesia (CMI), Northwest Airlines and United Air Lines. U.S. Route 2 carriers are currently limited to a total of 31 weekly frequencies. Those frequencies are

allocated among the three designated carriers as follows: CMI-7, Northwest-14 and United-10.<sup>1</sup> All the carriers are using their allocated frequencies.

Under the 1995 Protocol the frequencies available to U.S. carriers on Route 2 increase from 31 to 36 during a phase-in period between 1997 and 1999. Effective October 1, 1997, U.S. carriers will have the right to operate two additional frequencies, for a total of 33 weekly frequencies. Those frequencies are limited to the operation of all-cargo services. The frequencies increase to 34 weekly and 36 weekly frequencies effective October 1, 1998 and October 1, 1999, respectively, and remain at the 36 weekly level until September 30, 2003.

Northwest and United applied for the two frequencies that become available for all-cargo services on October 1, 1997. By Order 97-7-35, the Department tentatively determined that the award of the two frequencies to Northwest would best serve our goal of promoting competition in the U.S.-Philippines all-cargo market and would provide greater overall public benefits.

Interested persons were directed to file objections to our tentative decision no later than August 11, 1997, with answers to objections due no later than August 18. United filed an objection to the tentative decision. Northwest filed a reply to the objection.

### **Summary of pleadings**

United states that the Department's tentative allocation is not supported by the record and is inconsistent with the Department's precedent. United urges that the tentative decision be reversed and that one or both of the available all-cargo frequencies be allocated to United. In support of its objection, United states that Northwest is the dominant carrier in the U.S.-Philippines market and it cannot be accorded "new entrant" status when it can convert any of its combination frequencies into all-cargo services; cites the *U.S.-China Frequency Allocation Proceeding*, Docket 49760 (Orders 94-12-7 and 95-2-30) as precedent for considering the parity of economic opportunities in a market for awarding frequencies; and states that the fact that United's proposed flights will operate to Manila as a turnaround point while one of Northwest's flights will serve an additional intermediate point should remove any capacity advantage that Northwest might have in the U.S.-Philippines market with its B-747F aircraft.

United also argues that contrary to the Department's determination in Order 97-7-35, United was prejudiced by Northwest's amended service proposal and that the Department

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<sup>1</sup> CMI, Northwest and United hold certificate authority to serve the Philippines. See Orders: 95-1-41, 90-6-44 and 92-3-38, respectively. The frequency allocation of CMI was renewed and increased from four to seven flights when additional frequencies became available for regional service, and the frequency allocation of Northwest was renewed for fourteen frequencies. See Order 96-9-11. The frequency allocation of United was renewed for ten frequencies. See Orders 96-9-26 and 96-10-16. All of the allocations expire on September 30, 1998.

erred in accepting that proposal. United argues that the Department relied on Northwest's amended service proposal to state that there is no decisionally significant difference between the service proposals of United and Northwest. If the Department, nonetheless, continues to accept Northwest's amended proposal, United states that it should be allocated only one frequency, since one of Northwest's flights would serve Manila in the eastbound direction only and, thus, would provide fewer benefits than United's turnaround Manila service.

Northwest urges the Department to finalize its allocation in Order 97-7-35, stating that the Department's tentative decision is consistent with the public interest and fully supported by the record in this case. Northwest states that United's objection relies solely on its previous pleadings and provides no new basis for the Department to reverse its tentative decision. Northwest further states that all of United's arguments have been addressed by Northwest in previous pleadings and considered by the Department in Order 97-7-35.

### **Decision**

We have decided to make final our allocation of two weekly frequencies to Northwest to provide scheduled all-cargo service in the U.S.-Philippines market.

In reaching our tentative decision to allocate the frequencies to Northwest we concluded that the selection of Northwest would better serve our goal of promoting competition in the U.S.-Philippines all-cargo market. We noted that not only would Northwest provide competition to United's existing all-cargo services, it would also offer competition to Federal Express, UPS, and Polar, which are also authorized to serve the market, and that the addition of this service would make available to the public new price, service, routing and aircraft options, a benefit we found would be particularly important as the Philippine market develops. While allocating the frequencies to United would enable it to increase its service, we concluded that the competitive and service benefits of a new all-cargo entrant outweighed the benefits of increased operations by United and, thus, that allocating the two frequencies to Northwest would have the most beneficial impact on overall market structure and level of competition in the U.S.-Philippines all-cargo market.

We have carefully considered the objection and response to our tentative decision and conclude that United has not presented any new arguments or evidence that warrant a different result.

Instead, United again has raised the issue of parity of economic benefits, citing the *U.S.-China Frequency Allocation Proceeding* in support of its contention that it should be allocated the available frequencies, since it holds fewer overall U.S.-Philippine frequencies than Northwest. As we discussed in our tentative decision, each allocation case is considered on its own merits based on a number of broad public interest considerations. Relative frequency levels is only one of several factors considered. In this case, we considered the relative frequency levels of Northwest and United and found that the benefits to the shipping public of introducing all-cargo service by another carrier,

outweighed the public benefits of allocating more frequencies to United. United's reliance on the *China* case is misplaced. There the issue was whether additional competition by incumbent carriers providing scheduled combination services in the major U.S.-China markets outweighed the service benefits of an incumbent carrier introducing service to a new Chinese city. Here the critical issue is whether more public benefits in the U.S.-Philippine all-cargo market are to be gained by allocating the frequencies to United to increase its existing thrice weekly service, or by allocating the frequencies so that Northwest can institute a new all-cargo service in the market. Given the developing nature of the market, and the competition that a new service would offer, we concluded that authorizing a new service offered greater overall public benefits. United's parity arguments do not persuade us to reach a different result.

Nor are we persuaded by United's renewed argument that since Northwest holds the largest number of overall U.S.-Philippine frequencies, it is not a new entrant as described by the Department or entitled to any additional frequencies, and could convert some of its existing frequencies to operate its proposed all-cargo service. While Northwest does offer more combination service in the U.S.-Philippines market than any other U.S. carrier, Northwest does not currently provide Philippine all-cargo operations and would be a new entrant to the U.S.-Philippine all-cargo market.

Moreover, as we explained fully in our show-cause order, Northwest has consistently used its frequencies to provide combination service in the U.S.-Philippine market, services that compete with the combination service provided by United and Continental Micronesia and foreign carriers in the market. In addition, combination frequencies, once converted for all-cargo services, cannot be reconverted to operate combination services. In these circumstances, contrary to United's arguments, we find no public interest purpose to be served by requiring Northwest to convert permanently combination frequencies that it currently operates in order to provide its proposed all-cargo services, or that such a result would make most effective use of our limited route rights in the U.S.-Philippine market.

United has also argued that the Department has incorrectly concluded that Northwest's use of B-747F aircraft will make better use of the available frequencies, at least with respect to one of Northwest's proposed flights. The crux of United's argument is that Northwest will serve Bangkok as well as Narita on one of its westbound flights, resulting in more preemption of space than on United's service.<sup>2</sup> The fact is both carriers propose to operate their Philippine service via intermediate points, including Japan. Thus, both carriers will be carrying support traffic on their Philippine services. In our show-cause order, we recognized that as the Philippine market developed, the carriage of support traffic would likely contribute to the overall success of the Philippine cargo service.<sup>3</sup> As

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<sup>2</sup> United contends that Northwest's eastbound flight will carry U.S.-Thailand as well as U.S.-Japan and U.S.-Philippine traffic, and that its westbound flights will carry Thailand-U.S., Thailand-Japan fifth-freedom, and Japan-U.S., as well as Philippine-U.S. traffic.

<sup>3</sup> Order 97-7-35, at 6.

we also noted, to the extent that there may be some additional degree of preemption because of Northwest's inclusion of Bangkok, it is at least balanced by the fact that Northwest will operate larger aircraft than United.

Finally, United has again argued that it is being prejudiced by our grant of Northwest's motion to file an amended service proposal. We disagree. United had full opportunity to comment on the proposal before our show cause order, and did so. In addition, our tentative decision to select Northwest was based principally on fact that Northwest would be a new entrant in the all-cargo market and as such would introduce competitive services in the U.S.-Philippine all-cargo market. Given that our overriding consideration in this case was the market structure benefits to be gained from allocation of the frequencies, the differences in the service proposals of the carriers was not decisionally significant.

### **Dormancy Provisions**

As we indicated in Order 97-7-35, we will impose a standard 90-day startup requirement and 90-day dormancy condition on the frequency allocation awarded Northwest by this order.

### **ACCORDINGLY,**

1. We make final our tentative findings and conclusions in Order 97-7-35;
2. We allocate two weekly frequencies to Northwest Airlines, Inc. for all-cargo services in the U.S.-Philippine market through October 1, 1998, subject to a 90-day startup condition beginning October 1, 1997;
3. The frequency allocation in ordering paragraph 2, above, is effective immediately for services commencing October 1, 1997, and shall expire (a) December 29, 1997, unless, within that period the frequencies are operated, in which case the frequency allocation will expire October 1, 1998; or (b) once inaugurated, the 90th day after Northwest fails to use the frequencies for U.S.-Philippine all-cargo services, unless the Department earlier suspends, modifies, or withdraws the frequency allocation; and

4. We will serve this order on United Air Lines, Inc.; Northwest Airlines, Inc.; the Ambassador of the Philippines in Washington, DC; and the Department of State (Office of Aviation Negotiations).

By:

**PATRICK V. MURPHY**  
**Deputy Assistant Secretary for Aviation**  
**and International Affairs**

(SEAL)