



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

Issued by the Department of Transportation  
on the 13th day of February, 1998

SERVED: FEB 13, 1998

**1998 U.S.-JAPAN INTERIM FREQUENCY  
ALLOCATION PROCEEDING**

**Docket OST-98-3418**

**Application of  
  
AMERICAN AIRLINES, INC.  
  
for a waiver of 14 CFR 201.5**

**Docket OST-98-3431**

## ORDER GRANTING PENDENTE LITE AUTHORIZATIONS

### Summary

By this order we award, on a *pendente lite* basis, authority for new services to Japan, as described in this order, to American Airlines, Inc., Continental Airlines, Inc., and Delta Air Lines, Inc. We also allocate to each of these carriers a total of seven weekly frequencies for these services. The exemption authority and frequency allocations will be effective immediately for a period of one year, or until 90 days after a final decision in the *1998 U.S.-Japan Combination Service Proceeding* in Docket OST-98-3419, whichever occurs earlier.

### Background

On January 30, 1998, the United States and Japan agreed to authorize new combination air services in the U.S.-Japan market.<sup>1</sup> On February 3, 1998, we issued a notice inviting U.S. carriers to file applications to take advantage of their new rights. We acknowledged that for certain U.S. carriers the award of authority could require carrier selection procedures and thereby delay implementation. We committed to completing these procedures on an expedited basis. Nevertheless, in recognition that other U.S. and Japanese carriers serving Tokyo's Narita Airport

<sup>1</sup> Delegations of the United States and Japan signed a Memorandum of Consultations that attached understandings regarding the elements to be included in a Memorandum of Understanding. The delegations also agreed that the provisions of those understandings would be in effect provisionally upon signing of the MOC, pending conclusion of an interim agreement. The MOC includes new rights for combination and all-cargo services. Implementation of the all-cargo services available does not pose the same procedural issues as the combination service opportunities.

would be able, under the MOC, to expand their services immediately, we concluded that it would be in the public interest to allocate seven weekly frequencies to each of the MOU carriers (American, Continental/Continental Micronesia/Air Micronesia,<sup>2</sup> and Delta) on a *pendente lite* basis and to do so by final order. We said that this approach will permit rapid introduction of new services in the market, while preserving each carrier's procedural rights for a full examination of all evidentiary submissions before final allocation of the total number of frequencies available. To this end, we called for *pendente lite* applications to be filed by February 10, 1998.

### **Applications**

All three existing MOU carriers filed applications for *pendente lite* awards. American proposes daily service between its Chicago hub and Tokyo using MD-11 aircraft beginning May 1, 1998. Continental proposes service from both its Newark and Houston hubs to Tokyo (Narita) using B-777 aircraft, and seeks allocation of 14 weekly frequencies for these services. Continental plans to begin these services in November and December 1998. Delta proposes to operate a daily service between its hub at Atlanta and Tokyo (Narita) using MD-11 aircraft, beginning June 3, 1998. In addition, Delta seeks allocation of one additional frequency in order to expand its service in the Los Angeles-Tokyo market from six weekly flights to a daily service.

Each carrier maintains that grant of its application will promote its competitive ability in the market. American further urges the Department to grant its application immediately to afford it sufficient time to advertise its service. American argues that the Department's notice made clear its intent to grant each existing MOU carrier seven weekly frequencies on a *pendente lite* basis and, thus, that there is no need for further procedural dates in the *Interim Frequency Allocation Proceeding*. In explaining why it has requested more than the seven frequencies that we said we were prepared to grant, Continental argues that it is the only existing MOU carrier without any authority to serve Japan from the U.S. mainland and, therefore, requires 14 weekly frequencies in order to compete effectively with the other MOU and incumbent carriers that already operate services from the mainland. Delta, for its part, argues that it also requires an additional frequency in order to expand its currently operated Los Angeles-Tokyo services, which are currently limited to six weekly frequencies.

### **Decision**

We have decided to grant exemptions and to allocate a total of seven weekly frequencies each to American, Continental and Delta to operate the services proposed in their applications, as discussed below. The authorities granted will be effective immediately for a period of one year from the date of service of this order, or until 90 days after a final decision in the *1998 U.S.-Japan Combination Service Proceeding*, Docket OST-98-3418, whichever is earlier. The frequency allocations will be subject to our standard 90-day dormancy condition.

The three eligible carriers have filed applications to operate the *pendente lite* services offered by the Department in its February 3 Notice and we believe that it is in the public interest to grant these applications, as conditioned below, thereby facilitating implementation of new MOU carrier

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<sup>2</sup> Services operated by Continental and its affiliates Continental Micronesia and Air Micronesia are provided under one designation and under frequency limitations as one carrier.

services at Narita, while we complete the processing of the certificate proceeding for final allocation of the route opportunities under the MOC.<sup>3</sup> Our *pendente lite* awards will be without prejudice to our decision in the certificate proceeding.

Consistent with our notice, American has proposed service in the Chicago-Tokyo market and requested seven weekly frequencies for that service. Continental and Delta also filed applications for *pendente lite* services, but have requested allocation of more frequencies than those set forth in our Notice--Continental seeks fourteen weekly frequencies for service from two of its hubs and Delta seeks seven weekly frequencies for service from its Atlanta hub and one additional frequency to expand its service in the Los Angeles-Tokyo market. We find that the introduction of additional services from the various proposed gateway points would be consistent with the goals underlying our decision to award *pendente lite* authority in this case. Thus, we will award American Chicago-Tokyo exemption authority and will award Continental and Delta underlying authority to the extent necessary to serve their proposed markets.<sup>4</sup> We will limit our award of frequencies, however, to a total of seven weekly frequencies for each carrier. Continental and Delta may use the frequencies in either or both of the markets proposed in their applications based on their assessment of the market needs.

We are not prepared, however, to grant the full requests of Continental and Delta. As we stated in our February 3 Notice, we are committed to awarding the new route rights under the MOC on an expedited basis. We have already solicited applications for these services and in the very near future we will be issuing an order setting forth the expedited evidentiary requirements and procedural schedule for the proceeding. In the meantime, we believe that awards of seven weekly frequencies, on a *pendente lite* basis, to each MOU carrier best balances our goals of facilitating new services and affording expanded market access during the pendency of the certificate proceeding. While we appreciate the arguments raised by Continental and Delta for more frequencies, the competitive arguments raised are more appropriately considered in the certificate proceeding.<sup>5</sup>

Finally, we have decided to proceed with our awards without awaiting additional pleadings from the parties as set forth in our February 3 Notice. All three carriers have filed applications that can be granted under the terms set forth in our Notice and all three have indicated their desire to promote their proposed new services quickly. In these circumstances, we believe that the public interest is best served by moving forward to make the *pendente lite* awards final as stated in our

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<sup>3</sup> Based on officially noticeable data under Rule 24(n) of the Department's procedural regulations, we find that all three carriers are qualified to provide the proposed U.S.-Japan services.

<sup>4</sup> Delta already holds certificate authority to serve the Los Angeles-Tokyo market. Its services, however, are limited to six weekly flights and, thus, it requires an additional frequency allocation in order to expand its services.

<sup>5</sup> On February 11, 1998, American filed motions requesting that we reject the applications of Continental for Newark/Houston services and Delta for Los Angeles-Tokyo services because they did not comply with the Department's February 3 Notice regarding *pendente lite* awards in this proceeding. On February 12, 1998, the city of Chicago filed an answer in support of American's motions. Given our decision in this order, we will dismiss American's motions.

Notice, and facilitating the carriers' efforts to make the necessary arrangements for their proposed operations.<sup>6</sup>

**ACCORDINGLY,**

1. We exempt American Airlines, Inc., Continental Airlines, Inc., and Delta Air Lines, Inc. under 49 U.S.C. section 40109 to the extent necessary to engage in scheduled foreign air transportation of persons, property, and mail in the following markets:

Chicago-Tokyo	American Airlines, Inc.
Newark and Houston-Tokyo	Continental Airlines, Inc.
Atlanta-Tokyo	Delta Air Lines, Inc.;

2. We allocate to American Airlines, Continental Airlines, and Delta Air Lines, a total of seven weekly frequencies each for services in the authorized U.S.-Japan markets, as discussed in the text of this order;

3. The authorities granted in ordering paragraphs 1 and 2, above, are effective immediately for a period of one year from the date of service of this order, or until 90 days after a final decision in the *1998 U.S.-Japan Combination Service Proceeding*, Docket OST-98-3419, whichever occurs earlier;

4. The frequency allocations granted in ordering paragraph 2, above, are subject to the condition that the frequencies will revert to the Department if they are not used for a period of 90 days;<sup>7</sup>

5. We dismiss as moot the application of American Airlines, Inc. in Docket OST-98-3431 and the request of Delta Air Lines, Inc., in this docket, for waiver of the provisions of Section 201.5 of the Department's regulations to permit advance sale and advertising of their proposed U.S.-Japan combination services;

6. We dismiss the February 11, 1998, motions of American Airlines, Inc., in this docket, to reject the applications of Continental Airlines for Houston/Newark-Tokyo services and Delta Air Lines for Los Angeles-Tokyo services;

7. To the extent not granted or dismissed, we deny all outstanding requests in Docket OST-98-3418;

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<sup>6</sup> On February 4, 1998, in Docket OST-98-3431, American requested waiver of the provisions of Section 201.5 of the Department's regulations to permit advance sales and advertising of its proposed Chicago-Tokyo service. Continental objected to American's request to the extent that it was filed before American had filed its application for Chicago-Tokyo *pendente lite* authority. American filed a reply. In addition, Delta, in conjunction with its Atlanta and Los Angeles requests in this docket, sought waiver of the Section 201.5 provisions in order to permit sales and advertising of its services. In light of our decision here, awarding the carriers the necessary authority for their services, these requests are moot and we will dismiss them.

<sup>7</sup> Consistent with our standard practice, the 90-day dormancy period will begin on the date each carrier proposes to institute its new services.

8. We may amend, modify, or revoke this order at any time at our discretion without notice or hearing; and

9. We will serve this order on American Airlines, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., the Ambassador of Japan in Washington, D.C., the Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration (AFS-200).

By:

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

(SEAL)

*An electronic version of this order is available on the World Wide Web at  
<http://dms.dot.gov/general/orders/aviation.html>.*