Order 98-3-15

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

Issued by the Department of Transportation
on the 16th day of March 1998

SERVED: March 16, 1998

1998 U.S.-JAPAN COMBINATION SERVICE PROCEEDING	**Docket OST-98-3419**

ORDER

Summary

By this order, we have tentatively decided to (a) allocate 64 of the available 90 weekly frequencies available under the January 30, 1998 U.S.-Japan Memorandum of Consultations to American Airlines, Inc., Continental Airlines, Inc., and Delta Air Lines, Inc., as set forth in this order; (b) authorize Trans World Airlines, Inc. to serve the St. Louis-Tokyo (Narita) market under the first new entrant opportunity and allocate it seven weekly frequencies for this service; (c) authorize Hawaiian Airlines, Inc., for services in the Maui-Tokyo (Narita) market commencing January 1, 2000, using the second new entrant opportunity and allocate it seven weekly frequencies for this service; and (d) allocate the 28 weekly frequencies for U.S.-Japan code-share services by U.S. carriers equally to Trans World Airlines for its code-share services with Delta and to Continental for its code-share services with Northwest Airlines. We will afford interested parties ten days to object to our tentative decisions and seven calendar days for replies to any objections filed. Also, we have decided, by final action in this order, to allocate the 21 weekly frequencies available for beyond-Japan code-sharing services to Continental Airlines and Northwest Airlines for services beyond Japan to Seoul, Korea (or, alternatively, Taipei, Taiwan); Singapore; and Bangkok, Thailand.

Background

On January 30, 1998, the United States and Japan agreed to authorize new combination air services in the U.S.-Japan market.[1] Among other things, the MOC provides that the two U.S. carrier "incumbent airlines"--Northwest Airlines and United Air Lines--may immediately operate services between the United States and any points in Japan and beyond without limitation as to the number of flights that may be operated. Furthermore, a total of 90 additional weekly frequencies are available for U.S. carrier "non-incumbent" combination services, *i.e.*, services by the existing MOU carriers-American Airlines, Continental Airlines/Continental Micronesia/Air Micronesia[2], and Delta Air Lines--as well as one additional new entrant airline that may serve immediately, and a fifth airline that may enter the market on or after January 1, 2000.[3]

In addition, the MOC provides for a total of 28 weekly frequencies for U.S. carrier combination services that may be operated under code-share arrangements with other designated U.S. carriers in the U.S.-Japan market for U.S.-Japan gateway-to-gateway operations. It also provides for 21 weekly code-share frequencies for services beyond Japan under code-share arrangements with other U.S. designated airlines on a blind-sector basis.

Japanese incumbent carriers, Japan Airlines and All Nippon Airways, also have unrestricted rights in the U.S.-Japan market, and numerous additional frequencies are available immediately for other Japanese carrier services.

On February 3, 1998, the Department solicited applications by U.S. carriers interested in using the new route opportunities.[4]

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[1] 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.

[2] Services operated by Continental Airlines and its affiliates, Continental Micronesia and Air Micronesia, are provided under one designation and under frequency limitations as one carrier.

[3] Of the 90 frequencies that are available for MOU and new entrant airlines, 28 weekly frequencies may be operated between any point(s) in the United States and any point(s) in Japan. The remaining 62 weekly frequencies may be operated in any city-pair markets except: Honolulu-Tokyo, Los Angeles-Tokyo, San Francisco (excluding Oakland)-Tokyo, Chicago-Tokyo, New York (excluding Newark)-Tokyo, Guam/Saipan-Tokyo, Los Angeles-Osaka, Guam/Saipan-Osaka, Honolulu-Osaka, Honolulu-Nagoya, and Honolulu-Fukuoka. Except where certain code-share operations are involved, the services operated under these frequencies are limited to operations between the United States and Japan and, thus, do not include any rights to serve beyond Japan (including on a blind-sector basis).

[4] Notice dated February 3, 1998, established Docket OST-98-3419 for the *1998 U.S.-Japan Combination Service Proceeding.*

Applications

a. Direct Service Applications

Applications to use the 90 available new frequencies for U.S.-Japan services were filed by American, Continental/Continental Micronesia, Delta,[5] Hawaiian,[6] TWA, and US Airways.[7]

American requested a total of 28 weekly frequencies for services in the Chicago-, New York-, and Boston-Tokyo markets and the Dallas/Ft. Worth-Osaka market. American would operate a daily frequency in each market and proposes to begin services in all markets in 1998.

Continental and Continental Micronesia applied for a total of 35 weekly frequencies. Continental proposes service in the Newark- and Houston-Tokyo markets beginning in late 1998 and services in the Newark-Osaka market beginning in February 2000; Continental Micronesia proposes services in the Honolulu-Tokyo and Honolulu-Osaka markets beginning in February 2000. The carriers would operate a daily flight in each market.

Delta requested a total of 43 weekly frequencies for daily services in the Atlanta-, New York-, and Cincinnati-Tokyo markets and the Portland-Fukuoka and Portland- and Atlanta-Osaka markets. It also requested one additional weekly frequency to increase its existing Los Angeles-Tokyo service to a daily service. Delta proposes to begin its Atlanta-Tokyo, Portland-Osaka/ Fukuoka, and additional Los Angeles-Tokyo services in 1998; the remaining services would be instituted some time after January 1999. As part of its application Delta urged the Department to adopt procedures for awarding immediately authority for services that would begin in 1998, while deferring procedures for awarding authority--including Delta's own requests--for services that would begin later.

TWA seeks authority under the first new entrant opportunity and proposes to operate a daily service in the St. Louis-Tokyo market beginning in June 1999 and would offer single-plane service to Orlando on these flights. Hawaiian seeks authority under the second new entrant opportunity and proposes to operate a daily service in the Maui-Tokyo market beginning in January 2000. Each carrier seeks allocation of seven weekly frequencies for its service.

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[5] Consistent with the provisions of our February 3 Notice, the three existing MOU carriers amended previously filed applications and filed motions to consolidate those applications into this proceeding. We will grant the motions.

[6] By Notice dated February 9, 1998, the Department denied the request of Hawaiian Airlines to delay the procedural dates for filing U.S.-Japan service applications. The Department affirmed that decision in Order 98-2-11, February 13, 1998, denying Hawaiian's petition for reconsideration of that decision.

[7] US Airways had filed an application to serve the Philadelphia-Tokyo market as one of the two new entrant carriers that may serve Japan and had requested seven weekly frequencies for these services. It also filed an application for allocation of the 28 weekly same-country code-share frequencies for code-share operations with American Airlines and United Airlines. On February 20, US Airways filed a motion to withdraw its application. We will grant the motion. A number of answers were filed in response to US Airways' application. Given US Airways' withdrawal, we need not address the issues raised in the pleadings with respect to the application. In addition, TWA had filed a motion to dismiss US Airways' application. Under the circumstances, we will dismiss TWA's motion.

b. Code-Share Frequencies

TWA and its partner, Delta, and Continental and its partner, Northwest Airlines, have filed competing applications for allocation of the 28 U.S.-Japan code-share frequencies.[8] TWA and Delta propose to code-share in the Portland-Osaka/Fukuoka/Nagoya markets and the Los Angeles-Tokyo market. The Portland-Nagoya and Los Angeles-Tokyo services would begin immediately; the Portland-Osaka/Fukuoka services would begin in October 1998.

Continental and Northwest propose to code share in the Detroit-Osaka, Detroit-Tokyo, San Francisco-Tokyo and Los Angeles-Osaka markets, beginning as early as April 5, 1998.

Only Continental and Northwest applied for allocation of the 21 beyond-Japan frequencies. The carriers would operate services beyond Japan to Seoul (or alternatively, Taipei), Singapore and Bangkok, beginning April 5, 1998.[9] As no competing applications were filed, the carriers urge the Department to allocate these frequencies immediately so that they can commence services as soon as possible.

Responsive Pleadings

All of the applicants filed answers and replies to the applications of the other carriers. All argue that their proposed services would best serve the public interest and generally oppose the applications of the other carriers to the extent that they would preclude approval of their own applications.

In addition, numerous civic parties filed answers and replies supporting the carriers that propose service to their communities and attesting to the public benefits that those services would provide their cities.

The Dallas/Ft. Worth International Airport, the Massachusetts Port Authority and the City of Chicago filed in support of American's application for services at Dallas/Ft. Worth, Boston, Chicago. The Regional Business Partnership (Newark) filed in support of Continental's application to serve Newark, and the City of Houston and the Greater Houston Partnership filed in support of Continental's application to serve Houston and the Continental/Northwest application for beyond-Japan code-share services. The Port of Portland and the Georgia and Atlanta Parties[10] filed in support of Delta's proposed services to Portland and Atlanta. Portland also supports the TWA/Delta code-share application. The Missouri Chamber of Commerce, the

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[8] TWA's code-share application was filed on February 11, one day after the filing deadline. Hawaiian, supported by Northwest and Continental, has moved to strike TWA's application. As discussed later in this order, we have decided to accept TWA's application.

[9] The carriers state that if Korea will not permit the proposed code-share services, they would substitute Taipei for one of their beyond-Japan services.

[10] The Georgia and Atlanta Parties consist of the State of Georgia, the City of Atlanta, and the Atlanta Chamber of Commerce.

Associated Industries of Missouri,[11] the St. Louis Regional Commerce and Growth Association, the St. Louis Parties,[12] the State of Missouri, the City of Kansas City, Missouri, and the Greater Orlando Aviation Authority filed in support of TWA's proposed Orlando-St. Louis-Tokyo service. The State of Hawaii filed in support of Hawaiian's Maui proposal and Continental Micronesia's proposed Honolulu-Tokyo/Osaka services.

Of those parties responding to Delta's proposed procedures regarding immediate award of frequencies for 1998 services, only Continental and Continental Micronesia opposed the proposal.

Dallas/Ft. Worth Motion

On February 20, 1998, the Dallas/Ft. Worth International Airport filed a motion for immediate decision requesting that the Department immediately grant the applications for long-term authority of those U.S. carriers proposing to begin new U.S.-Japan services in 1998. Dallas/Ft. Worth argues that immediate grant of the 1998 services will allow for the prompt use of bilaterally-negotiated rights and provide the opportunity for non-incumbent carriers and U.S. communities to reap the maximum benefit from the new agreement this year.

Delta, American and Portland filed answers in support of the Dallas/Ft. Worth motion, stating that the 1998 proposals reflect the carriers' firm plans to serve the market and emphasizing the benefits to the affected communities and carriers. Again, as was the case with Delta's procedural proposal, Continental/Continental Micronesia voiced opposition, this time with Newark supporting their views. They argue that proposals for 1999/2000 services compete with those for 1998, that an award of the 1998 proposals elevates startup date as the primary selection factor when other selection criteria such as market structure, service proposals and fares may be more important, and that Ashbacker requires comparative consideration of the proposals.[13] They further argue that there is no certainty that the 1998 proposals would actually be operated in 1998, noting in particular that American's proposed New York- and Boston-Tokyo services are conditioned explicitly on availability of slots at Japanese airports and they contend that unoperated 1998 proposals are thus similarly situated with proposals to operate in future years.

Dallas/Ft. Worth filed a consolidated reply to the Continental/Continental Micronesia and Newark answers; Continental/Continental Micronesia filed a surreply; and Dallas/Ft. Worth filed a rejoinder to that surreply.[14]

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[11] The Associated Industries of Missouri states that it is a business and trade association.

[12] The St. Louis Parties consist of the City of St. Louis and the St. Louis Airport Commission.

[13] Ashbacker Radio Corp. v. F.C.C. 326 U.S. 327, 333 1945.

[14] All pleadings were accompanied by motions for leave to file otherwise unauthorized documents. We will grant the motions.

Tentative Decision

As we indicated in our February 3 Notice, the 1998 MOC represents a significant step towards a major liberalization of our aviation regime with Japan. Its core elements remove restrictions on the U.S.-Japan services of the incumbents, provide the opportunity for other airlines substantially to increase service in the market, authorize new entry for the first time in many years, and authorize cooperative working arrangements between and among airlines serving Japan and other foreign destinations for the first time ever. As such, the agreement provides the potential for enormous public benefits through improved service, enhanced competition, and significant, proconsumer changes to the U.S.-Japan market structure, and by making a significant contribution to the further development of global air transportation services and networks.

The MOC also recognizes that the U.S.-Japan market would greatly benefit from the additional services and competition made possible by the accord and, therefore, provides for the immediate implementation of new services. It is in these circumstances that we determined that there are compelling public interest reasons for implementing the valuable rights provided for in the MOC as rapidly, efficiently, and fairly as possible. As to the non-incumbents, we determined that we should meet these goals by granting them limited *pendente lite* authority and by using more comprehensive evidentiary procedures to consider their requests for longer-term authority.

Subsequent developments, including the positions of the carriers and civic parties participating in this case, clearly show that there is a significant public need for rapid, maximum implementation of the new and valuable U.S.-Japan route rights.

The U.S. and Japanese incumbent carriers have quickly acted to expand their services in the U.S.-Japan market. The MOU carriers have applied for authority that would allow them to introduce new services in the market quickly, including, in particular, a substantial range of new services in l998. Most of the parties to this proceeding have urged us to allocate the frequencies necessary to operate those services now to ensure that the MOU carriers are in the same position as the incumbent carriers to expand services in the market. They have also expressed concern over the negative competitive impact and significant economic cost to communities should comprehensive carrier selection procedures delay MOU carriers in implementing these services. In addition, competitive selection is no longer needed for certain authority to be granted in this case. Specifically, initially there were three applicants for the two new entrant opportunities and three applicants for the U.S.-Japan code-share authorities. Now there is only one applicant for each of the two new entrant designations, two applicants for the U.S.-Japan code-share frequencies, and only one applicant for the beyond-Japan code-share frequencies.

Against this background, we have tentatively decided that it is in the public interest to allocate that portion of the available direct service frequencies that are proposed to be served in 1998 or are proposed by a new entrant, and to allocate all of the code-share frequencies immediately. Specifically, we propose to allocate 64 of the 90 available direct service frequencies to the existing MOU carriers for their near-term service plans as proposed in this proceeding, and to authorize the two new entrant carriers and allocate to each of them frequencies for their proposed services.[15] The remaining direct service frequencies would be reserved for allocation in a subsequent proceeding. We have also tentatively decided to allocate the U.S.-Japan code-share frequencies equally between Continental and its partner, Northwest, and TWA and its partner, Delta. Finally, we have decided, by final action in this order, to allocate to Continental and Northwest the 21 beyond-Japan frequencies available for U.S.-carrier code-share services.

Direct Service Frequencies

One of the principal objectives of the MOC with Japan is to enhance competition by obtaining significantly increased opportunities for non-incumbent U.S. airlines. For many years our aviation relationship with Japan featured great disparity between the limited authority held by our three MOU carriers (American, Delta and Continental) and the incumbent carriers. Indeed, at the time that we instituted this proceeding, the MOU carriers were authorized to operate fewer than 50 weekly round-trip flights between the U.S. mainland/Hawaii and Japan--or less than 20% of the total scheduled service by U.S. carriers in the U.S. mainland/Hawaii-Japan market.

The new agreement responds to that situation by authorizing the U.S. MOU carriers to operate an additional 90 weekly round-trip flights in the market, and by providing that these new rights are effective immediately.

All of the MOU airlines have filed applications that would allow them to take immediate advantage of the new competitive opportunities provided for in the MOC. American would add four new daily services in l998 (Chicago-,Dallas/Ft. Worth-, and New York-Tokyo and Dallas/ Ft. Worth-Osaka); Continental would introduce two new daily services in l998 (Houston- and Newark-Tokyo); and Delta would add three new daily services in l998 (Atlanta-Tokyo, Portland-Fukuoka, and Portland-Osaka).

It is also significant that the U.S. and Japanese incumbent airlines have quickly acted to expand their services. Indeed, immediately upon the signing of the MOC, all of these carriers--Northwest, United, Japan Airlines, and All Nippon Airways--filed applications for authorization of the full level of rights available under the MOC. In addition, pending action on its application, United sought new authority to serve the Chicago-Osaka market for services beginning in May and announced plans to increase significantly its service in the Chicago-Tokyo market.[16]

In these circumstances, the immediate award of authority for 1998 services proposed by the MOU carriers would help to realize critical aviation objectives and provide other very substantial public benefits. It would make prompt use of extremely valuable route rights and would substantially improve service in the U.S-Japan market. As noted, the MOU carriers have proposed nonstop service in a substantial range of new U.S.-Japan city-pair markets. They would also offer many of

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[15] To the extent consistent with this result, we tentatively grant the motion of the Dallas/Ft. Worth International Airport. Also, on February 20 and amended February 23, 1998, as a result of US Airways' withdrawal from this proceeding, Hawaiian Airlines filed a motion for immediate decision, awarding it the second new entrant designation and allocating it seven weekly frequencies for its proposed Maui-Tokyo service. Based on our tentative decision in this proceeding, we tentatively grant the motion.

[16] January 30, 1998 Press Release of United Airlines regarding the signing of the MOC.

these services from their hubs, thereby providing new and improved on-line services to thousands of passengers in hundreds of hub catchment area markets. The immediate introduction of new nonstop and on-line services would significantly enhance competition in, and the competitive structure of, the markets in question by providing consumers with a wide array of new gateways and new service options from which to choose. In addition, the prompt operation of the new MOU services would provide consumers with the benefit of the highest level of intergateway competition in the history of the overall market. It would also maximize the ability of the MOU carriers to compete effectively with incumbent U.S. and Japanese airlines, especially as the incumbents now seek to expand their services.

We tentatively conclude that immediately authorizing all of the proposed 1998 services maximizes the public benefits derived from this agreement. In reaching this conclusion, we have carefully considered the position of Continental/Continental Micronesia and Newark. They believe that the immediate grant of the l998 services could deny Continental comparative consideration of its request for new U.S.-Japan authority. We intend to provide Continental/Continental Micronesia as well as other interested carriers with the opportunity to apply for additional frequencies for future services and, in this regard, it is simply too early to say that there will not be enough frequencies to support substantial additional service in the market. All carriers will have the chance to compete for the remaining twelve unallocated frequencies and any other frequencies that may become available for allocation.

Moreover, the MOC with Japan provides a unique opportunity to remedy many of the serious service and structural deficiencies that have adversely affected this market for years. For those reasons, the immediate authorization of the 1998 proposals provides far greater public interest benefits than those proposals that would begin in later years, such as those of Continental and Continental Micronesia, in terms of their ability to provide consumers and communities with what they need most--timely realization of new and improved service, competition, and the significantly enhanced economic benefits that are associated with aviation liberalization. Many of these public benefits would be lost if we waited until the year 2000 to implement a substantial portion of the route rights that we can implement now. We do not believe that that result would be in the public interest. Nor are we persuaded by Continental's suggestion that there is no real distinction between its year 2000 proposal and the l998 proposals of other airlines because of the slot situation at Tokyo's Narita airport. We believe that the public is better served by giving airlines the opportunity to gain access to Narita and to maximize the rights that we have obtained under the MOC, than by assuming, as Continental and Continental Micronesia do, that slots will not be available for these purposes. If carriers are able to get the slots that they need, the public would be seriously harmed if we did not give airlines the opportunity to operate their l998 proposals. On the other hand, if frequencies authorized by us now are not used and return to the Department, those frequencies would be available for reauthorization well before Continental's proposed year 2000 startup date.[17]

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[17] See discussion of dormancy conditions at p. 11, below.

Given these circumstances, we tentatively conclude that the public interest would be best served if we allocate to each of the existing MOU carriers the frequencies necessary for the services that they propose to implement in 1998, thereby enabling them to institute services as quickly as possible.

New Entry

As we said earlier, one of the core elements achieved in the new U.S.-Japan MOC is our ability to authorize new entry to Japan for the first time in many years. Having achieved this long-standing critical objective, and having exchanged valuable rights to the Japanese in return, we tentatively conclude that we must act forthrightly to maximize the likelihood that these important new U.S. carrier opportunities will be used. With this in mind, we have tentatively decided to allocate frequencies for the two new entrant applicants--TWA for St. Louis-Tokyo service using the first new entrant opportunity, and Hawaiian for service in the Maui-Tokyo market using the second new entrant opportunity. Given the common frequency pool, such a step is essential to ensure that each of these carriers will have the ability under the agreement to introduce its proposed new services. In addition, unlike the existing MOU carriers that are already serving the Japan market, these new entrant carriers will require additional lead time and preparation in establishing services in the market. We believe that authorization of the services now will best facilitate inauguration of those services as planned. Moreover, to the extent that a new entrant carrier seeks to operate code-share services in the market, it may do so only if it holds a designation for services in the U.S.-Japan market. All of these factors tentatively persuade us that it is in the public interest to make these authorizations now and to facilitate the competitive operations of these new entrant carriers in the U.S.-Japan market by allocating each of them the seven frequencies that each proposed.

U.S.-Japan Code-Share Frequencies

The code-share provisions of the MOC also enhance the overall goals of this new agreement by creating significant additional opportunities for new entry, improved services and greater competition in the U.S.-Japan market. We tentatively conclude that the best way to achieve these objectives is to permit both of the proposed code-share partner arrangements to use the opportunities under the MOC and, thus, not only to facilitate competition between those code-share operations, but also competition with other U.S. and Japanese carrier services, and with any U.S./Japanese carrier cooperative service arrangements. In this way we ensure that a greater number of cooperative service arrangements can serve the market and that more service and competitive benefits can result from those services, than if we allocated all of the available frequencies to just one code-share partnership. This approach should facilitate Continental's ability to offer additional on-line service between the U.S. mainland and Japan and, thus, develop its presence in the market in conjunction with the institution of its own services. Similarly, it should facilitate TWA's ability to enter the market and establish its presence between the U.S. and Japan. This approach should also enhance the geographic coverage of code-share services in the market, and should increase competition by creating a new competitive dynamic between the two code-share partnerships we propose to authorize here and between those partnerships and other U.S./Japanese carrier code-share services that are likely to participate in the market.

For these reasons, we have tentatively decided to allocate the 28 weekly U.S.-Japan code-share frequencies equally between Continental and its partner, Northwest, and TWA and its partner, Delta. As both carriers' requests are granted in part we will leave it to the carriers to determine in which of their proposed code-share markets the frequencies will best be used. No arguments have been raised here that persuade us to strike the balance differently.[18]

We are unpersuaded by American's arguments that additional information from Northwest and Continental regarding their code-share arrangement, comparable to that required by American and the TACA Group carriers with respect to their U.S.-Central America code-share operations, is necessary for us to consider their application for code-share frequencies in this case. As we have noted on several occasions, it is our policy to consider these cases and the need for additional information on a case-by-case basis.[19] The competitive considerations that prompted us to request that information in the AA/TACA case are not present here. There are substantial differences between the market conditions, levels of concentration, and opportunities for new entry and competition in each case to warrant fundamentally different evidentiary requirements.

As a final matter, Hawaiian, supported by Northwest and Continental, has requested that the Department strike TWA's code-share application since it was filed one day late. TWA has opposed the motion, arguing that its arrangement with Delta was not completed at the time of the filing deadline and that amended applications were not precluded by the Department. We made clear in our February 3 Notice the need for expedition in this case. Indeed, in this order we have reiterated the public interest considerations that support that assessment. We certainly expect carriers to adhere to the filing deadlines established by the Department. However, given the short delay involved, less than twenty-four hours after the filing deadline, and the full opportunity of all parties to comment on TWA's proposal, we are not persuaded that any party was prejudiced by TWA's filing. Nor did TWA's filing produce any delay in our own schedule for the conduct of this proceeding. In these circumstances, we have decided to grant TWA's motion for leave to amend its February 10 application in this docket to include its application for allocation of code-share frequencies, and to deny Hawaiian's motion to strike.[20]

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[18] On February 24, 1998, Northwest filed a motion for immediate decision to allocate the 21 beyond Japan and 28 U.S.-Japan code-share frequencies to Northwest and Continental. Delta, TWA, and the St. Louis Parties opposed Northwest's motion to the extent that it involved allocation of the 28 U.S.-Japan code-share frequencies. Continental and Northwest filed consolidated replies. We will grant Northwest's motion to the extent that it involves the 21 beyond Japan frequencies. Based on our decision here, we tentatively deny Northwest's motion to the extent it involves the 28 U.S.-Japan code-share frequencies.

[19] See Orders 96-11-12, 97-5-7, and 97-9-21.

[20] On February 12, American also filed a motion to strike. On February 20, American requested leave to withdraw its motion. We will dismiss American's motion.

Terms, Conditions, and Limitations

Consistent with our policy with respect to limited-entry routes, we propose that the certificate authority awarded in this case will be in the form of five-year, temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102(c).

We also propose that the frequency allocations would be awarded for an indefinite duration, but subject to the continued effectiveness of the holder's underlying economic authority as well as to our standard condition that we may amend, modify or revoke the allocation at any time and without hearing, at our discretion.

Finally, consistent with our standard practice, we propose that the frequencies allocated in this proceeding will be subject to our standard 90-day dormancy condition, wherein the frequencies would be deemed dormant if they are not operated for 90 days except where service in the market is seasonal. Where seasonal services are at issue, however, a carrier must notify the Department that its operations are of a seasonal nature; otherwise, the dormancy condition would apply. Under the dormancy condition, if flights allocated are not used for 90 days, the frequency allocation would expire automatically, and the frequencies revert to the Department for reallocation. [21]

Final Decision for Beyond-Japan Frequencies

We have decided, as a final action by this order, to allocate the 21 beyond Japan code-share frequencies to Continental and Northwest for their proposed code-share services. We find that such approval is consistent with the public interest. There are no competing applications for allocation of these frequencies, and except for American which we discussed above, no party has opposed the carriers' request. An allocation to Continental/Northwest will make immediate use of these route rights and will ensure that valuable service opportunities are not wasted. To facilitate Continental's ability to use these new rights promptly, we will award it exemption authority, sua sponte, for the services proposed by the carriers, and will act on its certificate application by separate order. The frequency allocation is effective immediately and will remain in effect indefinitely, subject to the condition that Continental continues to hold the underlying economic authority to operate the frequencies and to the further condition that we may amend, modify, or revoke the allocation at any time and without hearing, at our discretion. It is further subject to our standard 90-day dormancy condition as discussed above.

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[21] Consistent with our standard practice, the 90-day dormancy period would begin on the carrier's proposed startup date for service in each market.

ACCORDINGLY,

1. We tentatively allocate 64 of the 90 available U.S.-Japan frequencies as follows:

American Airlines:	7 weekly frequencies for Chicago-Tokyo 7 weekly frequencies for New York (JFK)-Tokyo 7 weekly frequencies for Boston-Tokyo 7 weekly frequencies for Dallas/Ft. Worth-Osaka
Delta Air Lines:	7 weekly frequencies for Atlanta-Tokyo 7 weekly frequencies for Portland-Osaka 7 weekly frequencies for Portland-Fukuoka 1 weekly frequency for Los Angeles-Tokyo
Continental Airlines:	7 weekly frequencies for Newark-Tokyo 7 weekly frequencies for Houston-Tokyo

2. We tentatively grant certificate authority to the carriers for the services described in ordering paragraph 1, above (except for Los Angeles-Tokyo);[22]

3. We tentatively grant certificate authority to Trans World Airlines, Inc. for services in the St. Louis-Tokyo market and allocate to it 7 weekly frequencies for this service;

4. We tentatively grant certificate authority to Hawaiian Airlines, Inc. for services in the Maui-Tokyo market and allocate to it 7 weekly frequencies for this service;

5. We tentatively reserve the remaining direct service frequencies available for allocation in a future proceeding;

6. We tentatively allocate the 28 weekly U.S.-Japan code-share frequencies as follows:

Continental/Northwest:	14 weekly frequencies for services in the Detroit-Osaka, Detroit-Tokyo, San Francisco-Tokyo, and Los Angeles-Osaka markets
TWA/Delta:	14 weekly frequencies for services in the Portland-Osaka, Portland-Nagoya, Portland-Fukuoka, and Los Angeles-Tokyo markets,

and tentatively grant the carriers the necessary certificate authority to operate these services;

7. We tentatively conclude that the frequencies allocated in ordering paragraphs 1, 3, 4, and 6, above, will be subject to our standard 90-day dormancy condition and the further condition that we may amend, modify or revoke the allocation at any time and without hearing at our discretion;

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[22] Delta already holds the necessary certificate authority on Route 585 to serve the Los Angeles-Tokyo market.

8. We grant all motions for leave to file otherwise unauthorized documents in this proceeding;

9. To the extent proposed in this order, we tentatively grant the February 20, 1998, Motion of the Dallas/Ft. Worth Airport for Immediate Decision in this docket;

10. To the extent proposed in this order, we tentatively grant the February 20, 1998, Motion of Hawaiian Airlines, Inc., as amended on February 23, 1998, for immediate authorization of its Maui-Tokyo service;

11. We grant the motions of American Airlines, Inc., Continental Airlines, Inc., Continental Micronesia Airlines, Inc., Delta Air Lines, Inc., and Trans World Airlines, Inc. to consolidate their previously filed U.S.-Japan applications into the *1998 U.S.-Japan Combination Service Proceeding*, Docket OST-98-3419 as follows:

American Airlines, Inc.	Dockets OST-96-1091; OST-96-1126
Continental Airlines, Inc.	Docket OST-96-1213
Continental Micronesia Airlines, Inc.	Docket OST-96-1199
Delta Air Lines, Inc.	Docket OST-97-2913
Trans World Airlines, Inc.	Docket OST-96-1121;

12. We dismiss, as moot, the February 12, 1998, Motion to Strike the Amended Application of Trans World Airlines, Inc. filed by American Airlines, Inc.;

13. We deny the February 12, 1998, Motion to Strike the Amended Application of Trans World Airlines, Inc., filed by Hawaiian Airlines, Inc.;

14. We grant the February 20, 1998, Motion of US Airways, Inc. to withdraw its application in this proceeding;

15. We dismiss the motion of Trans World Airlines, Inc., to dismiss the application of US Airways, Inc.;

16. We direct any interested parties having objections to our tentative decisions in this order to file their objections with the Department, Dockets, Attention: Docket OST-98-3419, U.S. Department of Transportation, PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590 no later than March 26, 1998; answers to any objections are due no later than April 2, 1998;[23]

17. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action;

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[23] All submissions should be on 8½" X 11" paper using dark (not green) ink, and be unbound, without tabs, which will facilitate use of our docket imaging system.

18. If no objections are filed, we will deem all further procedural steps to be waived and will proceed to a final order;

19. We allocate, as a final action, the 21 beyond-Japan code-share frequencies available for allocation to U.S. carriers to Continental Airlines and Northwest Airlines for the services proposed in this order, and grant Continental the necessary exemption authority to operate these services for a period of one year, or until 90 days after final action on Continental's corresponding certificate application, whichever occurs earlier;

20. The frequencies allocated in ordering paragraph 19, above, are subject to the condition that the frequencies will revert to the Department for reallocation if they are not used for a period of 90 days, and our standard condition that we may amend, modify, or revoke the allocation at any time and without hearing, at our discretion; and

21. We will serve this order on all parties to this proceeding; the Ambassador of Japan in Washington, DC; and the U.S. Department of State (Office of Aviation Negotiations).

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
http://dms.dot.gov/general/orders/aviation.html.