

Served: April 6, 1998



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation
on the 17th day of March, 1998

Applications of

American Trans Air, Inc.

Delta Air Lines, Inc.

United Air Lines, Inc.

**for certificates of public convenience and necessity
under section 41102 of Title 49 U.S.C. and the orders
and regulations of the Department of Transportation**

Dockets OST-96-1503

OST-97-2892

OST-97-2946

OST-97-3020

ORDER ISSUING CERTIFICATES

The captioned applicants seek grant, renewal, and/or amendment of certificates of public convenience and necessity under section 41102 of Title 49 of the United States Code. The applications are fully described in the attachments to this order. Because the public convenience and necessity bases for granting these applications are clear, and the applications are not controversial, it is appropriate to use this simplified, Subpart Q procedure to grant the requested authority.¹

The applicants have filed and perfected each application as required by 14 CFR 201 and served it as required by 14 CFR 302.1705. Each application was summarized in the Federal Register, as cited in the relevant descriptive attachment, and was also summarized in the Department's published weekly list of applications filed. These notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Except as noted in individual attachments, no answers to these applications were filed.

¹ 14 CFR 302.1701 et seq. Under Rule 29(b) we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

Public Convenience and Necessity

We find that grant or amendment of these certificates is consistent with the public convenience and necessity. Where, as noted, the services authorized are the subject of a bilateral agreement, the certificate is consistent with the agreement and uses rights for which the United States has exchanged valuable operating rights. For authority which is not the subject of a bilateral agreement, the grant is consistent with the overall state of aviation relations between the United States and the foreign countries involved. All of the authority conferred here contributes to the variety of price and service options available to travelers and shippers.

Fitness/Citizenship

Each applicant is a citizen of the United States as defined in 49 U.S.C. 40102(a)(15). Each is an operating certificated air carrier for which the authority at issue here would not constitute a substantial change in operations which would require further review by the Department. No information has come to our attention which leads us to question the fitness of the applicants to conduct air transportation operations. Therefore, on the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we find each applicant is fit, willing and able to provide the services authorized.

Terms, Conditions and Limitations

Each certificate of public convenience and necessity is subject to the standard terms, conditions, and limitations we consistently impose in the public interest. Duration of certificate authority is determined by the nature of the routes at issue. Where routes may be served by multiple U.S. carriers, without restrictions on additional entrants, the certificates are of indefinite duration. Where limited-entry routes are involved, we issue temporary, experimental certificates of five years' duration under 49 U.S.C. 41102(c).² The certificates issued to Delta to serve Kenya, and to United, are granted for a five-year term; the certificates issued to American Trans Air and Delta to serve the Cayman Islands are for an indefinite duration.

Pendente Lite Exemptions

For those services operated under current exemptions, those exemptions will expire in accordance with their own terms 90 days after we submit this order for review under 49 U.S.C. 41307. For those routes operated under expired exemptions and kept in force by 5 U.S.C. 558(c), the exemption renewal applications on file will be dismissed by separate order, upon the effectiveness of the corresponding certificates of public convenience and necessity. The attachments cite the relevant currently held authority.

² 14 CFR Part 399.120.

Findings and Conclusions

In view of the foregoing and all the facts of record, we find and conclude that:

1. It is consistent with the public convenience and necessity to amend or issue each applicant a certificate in the form attached;
2. Each applicant is a citizen of the United States and is fit, willing and able to perform properly the foreign air transportation described in the attached certificate or certificate amendment and to conform to the provisions of Subtitle VII of Title 49, United States Code (Transportation), and to the Department's rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the attached certificates and certificate amendments be subject to the terms, conditions and limitations contained in and attached to those certificates and to such others required by the public interest as the Department may prescribe;
4. Except as otherwise noted in the attachments, the issuance of each of these certificates and certificate amendments does not constitute a "major regulatory action" under the Energy, Policy and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations;³ and
5. The public interest does not require an oral evidentiary hearing or a show-cause proceeding on any of these applications. There are no material, determinative issues of fact requiring such procedures for their resolution.

ACCORDINGLY,

1. We amend or issue in the form attached, certificates of public convenience and necessity to the applicants listed in the caption of this order;
2. To the extent not granted, dismissed or deferred, we deny all motions and requests in these dockets;
3. We will not entertain petitions for reconsideration of this order;⁴

³ Our finding is based on the fact that grant of each application would not result in a near-term increase in annual fuel consumption in excess of 10 million gallons.

⁴ All parties have had a full opportunity to comment on the applications filed. In each case, no answers were filed to the applications for new or amended certificate authority included in this order.

4. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order and the attached certificates and certificate amendments shall become effective upon the 61st day after its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;⁵ and

5. We will serve this order on the parties to the captioned dockets of this order, the Ambassador in Washington, DC of each country that the applicants seek authority to serve, the U.S. Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation and
International Affairs

(SEAL)

⁵ This order was submitted for section 41307 review on March 17, 1998. On April 1, 1998, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

American Trans Air, Inc.

Amendment of Certificate for **Route 538**

Filed: 7/5/96 **Docket:** OST-96-1503 **Notice:** 61 FR (37105) 7/16/96

I. Authority Sought: Scheduled foreign air transportation of persons, property, and mail between Orlando, Florida, and Grand Cayman, Cayman Islands.

II. Relevant Currently Held Authority: American Trans Air holds certificate authority to provide service between Indianapolis and Cincinnati, on the one hand, and Grand Cayman, on the other. Order 95-9-23. It also holds exemption authority to provide service in the Orlando-Grand Cayman market. Order 96-8-39.

III. Pleadings: No answers were filed.

IV. Public Convenience and Necessity: The authority requested is consistent with the aviation agreement between the United States and the United Kingdom.

V. Fitness/Citizenship: American Trans Air has previously been found to be a citizen of the United States and fit, willing, and able to provide scheduled foreign air transportation of persons, property, and mail as a certificated air carrier under section 41102 of Title 49 U.S.C. See, e.g., Order 95-9-23. The foreign air transportation authorized does not constitute a substantial change in operations under Part 204 of the Department's regulations, warranting further review by the Department. Moreover, no information has come to our attention which would lead us to question American Trans Air's fitness to conduct the air transportation operations authorized here.

VI. Terms, Conditions and Limitations: Standard. For administrative efficiency we will award the authority requested by reissuing American Trans Air's certificate for Route 538 to add Orlando as a coterminal point on segment 2, rather than issue a new certificate for separate authority, as American Trans Air had requested.

VII. Duration: Indefinite.



Certificate of Public Convenience and Necessity

For Route 538

(as reissued)

This Certifies That

American Trans Air, Inc.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 98-4-3
On March 17, 1998
Effective on April 1, 1998**

**Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs**

Terms, Conditions and Limitations

American Trans Air, Inc. for **Route 538**

is authorized to engage in scheduled foreign air transportation of persons, property, and mail:

1. Between a point or points in the United States and a point or points in the Bahamas, Jamaica, Haiti, Dominican Republic, St. Kitts and Nevis, St. Lucia, Antigua and Barbuda, Guadeloupe, Martinique, Barbados, Grenada, Trinidad and Tobago, Aruba, Anguilla, Carricou, Dominica, Montserrat, Mustique, St. Barthelemy, St. Vincent and the Grenadines, St. Maarten, St. Eustatius, Curacao, Saba, the British Virgin Islands, and Union Island;
2. Between the coterminal points Indianapolis, Indiana; Cincinnati, Ohio; and Orlando, Florida; on the one hand, and Grand Cayman, Cayman Islands, on the other.

This authority is subject to the following conditions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the holder has been specifically designated to conduct such services and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.

- (4) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).
- (5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (7) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.
- (8) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

This certificate shall become effective April 1, 1998.

*This certificate, issued by Order 88-2-48 and reissued by 95-9-23, is further reissued to reflect award of new authority in the Orlando-Grand Cayman market. It also incorporates new standard terms and conditions applicable to U.S. carriers.

Delta Air Lines, Inc.

Certificate of Public Convenience and Necessity

Filed: 9/11/97 **Docket:** OST-97-2892 **Notice:** 62 FR (49570) 9/22/97

I. Authority Sought: Scheduled foreign air transportation of persons, property, and mail between a point or points in the United States and a point or points in the Cayman Islands, and to integrate this authority with its existing certificate and exemption authorities.

II. Relevant Currently Held Authorities: Delta holds certificate authority to provide scheduled foreign air transportation of persons, property, and mail between the United States and various points in the Caribbean. Order 88-8-57. Delta also holds exemption authority for service between Atlanta and Grand Cayman (See Order 97-11-19.)

III. Pleadings: No answers were filed.

IV. Public Convenience and Necessity: The authority requested is consistent with the aviation agreement between the United States and the United Kingdom. Consistent with our standard practice to afford carriers the maximum operating flexibility possible, we will grant Delta the authority to integrate the above authority with its existing certificate and exemption authorities. The route integration authority is subject to the provisions of the aviation agreements between the United States and the foreign countries involved.

V. Fitness/Citizenship: Delta has previously been found to be a citizen of the United States and fit, willing, and able to provide scheduled foreign air transportation of persons, property, and mail as a certificated carrier under section 41102 Title 49 U.S.C. See, e.g., Order 97-3-24. The foreign air transportation authorized does not constitute a substantial change in operations under Part 204 of the Department's regulations, warranting further review by the Department. Moreover, no information has come to our attention which would lead us to question Delta's fitness to conduct the air transportation operations authorized here.

VI. Terms, Conditions and Limitations: Standard. We will issue Delta a certificate to reflect newly authorized services in the U.S.-Cayman market. We will also add a new condition regarding route integration authority in limited-entry markets.

VII. Duration: Indefinite.



Certificate of Public Convenience and Necessity

For Route

751

This Certifies That

Delta Air Lines, Inc.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 98-4-3
On March 17, 1998
Effective on April 1, 1998**

**Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs**

Terms, Conditions and Limitations

Delta Air Lines, Inc. for **Route 751**

is authorized to engage in scheduled foreign air transportation of persons, property, and mail:

Between a point or points in the United States, and a point or points in the Cayman Islands.

This authority is subject to the following conditions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the holder has been specifically designated to conduct such services and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).
- (5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.

- (7) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.
- (8) In the event that the holder ceases all operations for which it was found “fit, willing, and able,” its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.
- (9) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in the holder’s authority by virtue of the route integration authority granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This certificate shall become effective April 1, 1998.

*This certificate is issued to reflect new authority in the U.S.-Cayman Islands market. It also incorporates new standard terms and conditions applicable to U.S. carriers.

Delta Air Lines, Inc.

Renewal of Certificate for **Route 616**

Filed: 9/29/97 **Docket:** OST-97-2946 **Notice:** 62 FR (53046) 10/10/97

- I. Authority Sought:** Scheduled foreign air transportation of persons, property, and mail between New York, New York, and Boston, Massachusetts, on the one hand, and Nairobi, Kenya, on the other.
- II. Relevant Currently Held Authorities:** Delta currently holds certificate authority on segment 12 of Route 616 to serve the above route. Order 93-4-3. Under the terms of the certificate, Delta's authority will expire on April 1, 1998. Delta filed a timely application for renewal of its certificate authority.
- III. Pleadings:** No answers were filed.
- IV. Public Convenience and Necessity:** The authority requested is consistent with the overall state of aviation relations between the United States and Kenya.
- V. Fitness/Citizenship:** Delta has previously been found to be a citizen of the United States and fit, willing, and able to provide scheduled foreign air transportation of persons, property, and mail as a certificated carrier under section 41102 Title 49 U.S.C. See, e.g., Order 97-3-24. The foreign air transportation authorized does not constitute a substantial change in operations under Part 204 of the Department's regulations, warranting further review by the Department. Moreover, no information has come to our attention which would lead us to question Delta's fitness to conduct the air transportation operations authorized here.
- VI. Terms, Conditions and Limitations:** Standard. We will amend condition (8) of Delta's certificate for Route 171, to reflect renewal of the New York/Boston-Nairobi authority for an additional five years.
- VII. Duration:** Five years. Section 41102(c).

Delta Air Lines, Inc.

Certificate Amendment for **Route 616**

Amend condition (8) to read as follows:

- (8) The authority to serve Nairobi, Kenya on segment 12 shall be limited to combination carriage only and shall expire on [five years from the effective date of this order]

This certificate amendment shall become effective April 1, 1998.

*This certificate, issued by Order 91-10-33 and amended by Order 93-4-3, is further amended to reflect renewal of the carrier's authority on segment 12 for an additional five years.

United Air Lines, Inc.

Renewal of Certificate for **Route 246**

Filed: 10/15/97 **Docket:** OST-97-3020 **Notice:** 62 FR (55665-66) 10/27/97

I. Authority Sought: Scheduled foreign air transportation of persons, property, and mail between the coterminal points Los Angeles and San Francisco, California; Chicago, Illinois; New York, New York; and Honolulu, Hawaii; the intermediate point Tokyo or another intermediate point in Japan; and the coterminal points Beijing, Shanghai, and Guangzhou, People's Republic of China.

II. Relevant Currently Held Authorities: United currently holds certificate authority on Route 246 to serve the above route. Order 93-4-3. Under the terms of the certificate, United's authority will expire on May 1, 1998. United filed a timely application for renewal of its certificate.

III. Pleadings: No answers were filed.

IV. Public Convenience and Necessity: The authority requested is consistent with the aviation agreement between the United States and the People's Republic of China, and with the 1998 Memorandum of Understanding between the United States and Japan, initialed in Washington on January 30, 1998, which is now provisionally in effect.

V. Fitness/Citizenship: United has previously been found to be a citizen of the United States and fit, willing, and able to provide scheduled foreign air transportation of persons, property, and mail as a certificated carrier under section 41102 Title 49 U.S.C. See, e.g., Order 97-10-8. The foreign air transportation authorized does not constitute a substantial change in operations under Part 204 of the Department's regulations, warranting further review by the Department. Moreover, no information has come to our attention which would lead us to question United's fitness to conduct the air transportation operations authorized here.

VI. Terms, Conditions and Limitations: Standard. We will reissue United's certificate for Route 246 to reflect renewal of United's authority for an additional five years.

VII. Duration: Five years. Section 41102(c).



**Experimental Certificate
of Public Convenience and Necessity**

For Route 246
(as reissued)

This Certifies That

United Air Lines, Inc.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 98-4-3
On March 17, 1998
Effective on April 1, 1998**

**Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs**

Terms, Conditions and Limitations

United Air Lines, Inc. for **Route 246**

is authorized to engage in scheduled foreign air transportation of persons, property, and mail:

Between the coterminal points Los Angeles and San Francisco, California; Chicago, Illinois; New York, New York; and Honolulu, Hawaii; the intermediate point Tokyo or another intermediate point in Japan; and the coterminal points Beijing, Shanghai, and Guangzhou, People's Republic of China.

This authority is subject to the following conditions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the holder has been specifically designated to conduct such services and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for this authority.

- (5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n), it must first comply with the requirements of 14 CFR 204.5.
- (9) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

This certificate shall become effective April 1, 1998. It shall expire five years thereafter, unless the Department earlier suspends, modifies, or deletes the authority.

*This certificate, originally issued by Order 85-12-1, and reissued by Orders 88-2-48 and 93-4-3, is further reissued to reflect renewal of authority in the U.S.-China market for an additional five years. The reissued certificate also deletes obsolete terms and conditions, and incorporates revised standard terms and conditions applicable to U.S. carriers.