



Order 98-7-21

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION Served Aug. 4, 1998
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation
on the 29th day of July, 1998

Applications of

Amerijet International, Inc.

Delta Air Lines, Inc.

Northwest Airlines, Inc.

Polar Air Cargo, Inc.

United Air Lines, Inc.

United Parcel Service Co.

for exemptions or authorities under 49 U.S.C. section
40109 and the orders and regulations of the
Department of Transportation

Dockets OST-98-3860*

OST-97-3124

OST-95-951*

OST-97-2610

OST-98-3653*

OST-97-2610

OST-97-2610

OST-98-3624*

OST-98-3754*

*The referenced Notice contains minor editorial or technical changes from the Notice originally issued. Any changes that we have made are nonsubstantive in nature and do not affect the authority described in the original Notice in question. To the extent that, following the issuance of a confirmation order, parties or other persons need to rely on the content of a Notice of Action Taken, they should regard the language in the Notice attached to the order, rather than the language of the original Notice, as the language that the Department is in fact confirming.

ORDER

The captioned U.S. air carriers have applied for various forms of authority or relief from Title 49 of the U.S. Code or regulations or orders of the Department in order to perform the air transportation activities shown in the attached Notices of Action Taken.

Except as noted, no answers were filed to these requests. Because of the imminence of these operations, we approved them by telephone, subject to adherence, by each applicant, to the conditions set forth in its certificate(s) of public convenience and necessity, and/or conditions attached.

We carefully considered the information set forth in each application described in the attached Notices of Action Taken, and we found that each of the proposed operations was consistent with the public interest and was consistent with an applicable bilateral aviation agreement and/or the aviation relationship between the United States and the foreign country involved, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

Under authority assigned by the Department in its Regulations, 14 CFR Part 385, we found that for each operation (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption or authority was consistent with the public interest; and (3) grant of this authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.¹

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced U.S. air carriers (1) exemptions from the provisions of Section 41101 and where necessary 41504 or as noted in the attached notices, other sections of Title 49 U.S.C.; or (2) relief or authorizations as provided for under regulations or orders of the Department, to the applicants to perform the operations described in the attached Notices of Action Taken;
2. In the conduct of the service, each applicant was to adhere to the conditions set forth in the Appendix, and to any other conditions as noted in the attached Notices of Action Taken;

¹ On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found that each U.S. air carrier applicant for an operating exemption is qualified to provide the services authorized.

3. To the extent not granted, or explicitly deferred as noted in the attached Notices of Action Taken, these applications are denied; and
4. We may amend, modify, or revoke this order at any time without hearing.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within ten (10) days after the date of service of this order. The filing of a petition for review of a particular action shall affect this order only as it concerns that action.

These actions were effective when taken, and the filing of a petition for review will not alter their effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

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

U.S. Carrier
Standard Exemption Conditions

In the conduct of the operations authorized by the attached order, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with the requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted or confirmed by the attached order shall be effective only during the period when the holder is in compliance with the conditions imposed above.

NEW



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

June 16, 1998

This serves as interim notice to the public of the action described below, taken by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of AMERIJET INTERNATIONAL, INC., filed 5/19/98 in Docket OST-98-3860 for:

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of property and mail between the coterminal points Miami and Ft. Lauderdale, Florida, and the terminal point Cozumel, Mexico. Amerijet also requested authority to combine this authority with other authority it has been awarded or may be awarded in the future.

Applicant rep: John Richardson (202) 496-1234 DOT Analyst: Linda L. Lundell (202) 366-2336

DISPOSITION

XX **Granted Exemption Authority and Integration Authority for Current Authorizations (See Remarks)**

XX **Balance Dismissed (See Below)**

The above action was effective when taken: May 27, 1998, through May 27, 2000, or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director

Office of International Aviation

(Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing a petition shall not stay the effectiveness of this action.)

XX **The authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX **Holder's certificate of public convenience and necessity**

XX **Standard Exemption Conditions (attached)**

(See Reverse Side)

Conditions: The U.S.-Mexico exemption authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2, and the notice requirements for seasonal/intermittent services as set forth in Order 96-11-24, at 5.¹

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority granted should be construed as conferring upon Amerijet rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Amerijet notifies us of its intent to serve such a market and unless and until the Department has completed any necessary 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 Amerijet's authority by virtue of the route integration exemption granted here, but that are not then being used by Amerijet, the holding of such authority by route integration will not be construed as providing any preference for Amerijet in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Remarks: We dismissed the carrier's request for route integration authority with respect to future certificate/exemption authority. When faced previously with a comparable request, we decided not to grant open route integration authority on a prospective basis (see Order 96-11-25, at 3), and Amerijet has provided no persuasive basis for us to deviate from that result here. Furthermore, we note that currently the U.S.-Mexico Air Transport Agreement provides only for blind-sector all-cargo services beyond Mexico.

We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served with the application.

¹ By Order 96-11-24, the Department established a policy of permitting U.S. carriers operating all-cargo services in the U.S.-Mexico market additional flexibility to conduct operations on a seasonal/intermittent basis without being subject to the standard dormancy conditions. Such operations, however, are subject to the condition that, if a carrier changes the type of service offered in a given city-pair market (seasonal/intermittent vs. year-round), the carrier is required to notify the Department of the change so that the Department can continue to monitor how the various U.S.-Mexico markets are being served. In addition, the Department publishes the updated information in the Department's Weekly List of Applications Filed, to ensure that all interested parties are notified of the status of the market at issue.

NEW



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

February 20, 1998

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of Delta Air Lines, Inc. filed 11/13/97 in Docket OST-97-3124 for:

XX Allocation of 7 weekly frequencies and exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Atlanta, Georgia, and Lima, Peru, and beyond, and to combine this authority with Delta's other exemption and certificate authority consistent with applicable bilateral aviation agreements. Delta states that it plans to begin the Atlanta-Lima service with B-757 aircraft in June 1998, or within 90 days of the service date of a final order granting Delta's request for route authority and frequencies, whichever is later.

Applicant rep.: Robert E. Cohn, 202-663-8060 DOT analyst: John Quay, 202-366-1052

DISPOSITION

XX Granted in part (subject to conditions, see below)

XX Balance dismissed (*i.e.*, authority for service beyond Lima)

The above action was effective when taken: February 20, 1998, through February 20, 1999, or until final action on Delta's application for Atlanta-Peru certificate authority in Docket OST-97-3218, whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)

XX Authority granted is consistent with the air transport agreement and related understandings between the United States and Peru.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

(See Reverse Side)

Remarks: Under the U.S.-Peru aviation agreement, there are no limits on the number of U.S. carriers that may serve the U.S.-Peru market; however, frequency of service is limited to a total of 42 weekly frequencies for combination air services. Under a December 1997 letter, the Government of Peru agreed that seven additional weekly frequencies will be available for U.S.-carrier services beginning no earlier than June 1998. These flights may also serve, on an optional basis, Iquitos, as a coterminal point with Lima. By Notice dated January 28, 1998, we invited applications from all U.S. carriers interested in using the seven weekly frequencies that become available in June, noting that Delta had already filed an application to serve the market. No competing applications were filed and no answers have been filed to Delta's request for allocation of the seven weekly frequencies.

Conditions: Consistent with Department practice, the seven weekly frequencies allocated here are subject to the condition that they will expire automatically and the frequencies will revert to the Department for reallocation if they are not used for a period of 90 days. The 90-day dormancy period will begin June 1, 1998, the date the frequencies become available.

The route integration authority requested is granted subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Delta rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Delta notifies us of its intent to serve such a market and unless and until the Department has completed any necessary 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 Delta's authority by virtue of the route integration exemption granted here, but that are not then being used by Delta, the holding of such authority by route integration will not be considered as providing any preference for Delta in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Dismissal: We dismissed that portion of Delta's application to the extent that it requested authority for service beyond Lima. Such route rights are restricted under the U.S.-Peru aviation agreement. Should Delta develop plans to provide specific service beyond Lima, it may file an application to amend the exemption authority granted here.

RENEW



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

June 8, 1998

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of Northwest Airlines, Inc. filed 12/11/97 in Docket OST-95-951 to:

XX Renew for two years exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between points in the United States and Bucharest, Romania, via Amsterdam. Northwest intends to operate this service pursuant to a code-share arrangement with KLM Royal Dutch Airlines. United Air Lines filed an answer to Northwest's application stating it did not oppose renewal as long as it does not prejudice United's ability to exercise its right to offer code-share services to Bucharest via Germany with Lufthansa German Airlines.

Applicant rep.: Megan Rae Poldy, 202-842-3193 DOT analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX Granted (subject to conditions, see below)

The above action was effective when taken: June 8, 1998, through June 8, 2000

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director

Office of International Aviation

(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.

Filing of a petition shall not stay the effectiveness of
this action.)

XX Exemption authority granted is consistent with the aviation agreement between the United States and Romania.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Conditions:

(1) Any code-sharing operations conducted under this authority must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the subject
(See Reverse Side)

foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept all obligations established in its contract of carriage with the passenger; that the passenger liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(2) Any code-share operations to third countries are subject to the condition that any service provided shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (i) nothing in the award of this authority should be construed as conferring upon Northwest rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier rights are limited unless Northwest 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 (ii) should there be a request by any carrier to use the limited-entry route rights that are included in Northwest's authority by virtue of the authority granted here, but that are not being used by Northwest, the holding of such authority will not be considered as providing any preference for Northwest in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Remarks: With respect to United's concern, the Department granted United a statement of authorization to offer code-share services with Lufthansa to Bucharest via Germany. (See Order 98-4-8.) With respect to operation of third-country code-share services involving Romania, both the United/Lufthansa and the Northwest/KLM code-share services are subject to the provisions of the 1997 U.S.-Romania aviation agreement and to any subsequent regulatory procedures that may be necessary to implement the rights available under those provisions.

The authority for which Northwest requested renewal expired February 9, 1998, but had been kept in force pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 558(c), as implemented by 14 CFR 377, pending action on its timely filed renewal application.

NEW



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

July 9, 1998

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applications of NORTHWEST AIRLINES, INC. filed 4/23/98 in Docket OST-97-2610
POLAR AIR CARGO, INC. filed 4/29/98 in Docket OST-97-2610
UNITED AIR LINES, INC. filed 4/30/98 in Docket OST-97-2610

XX Allocation of Russian overflight frequencies

Northwest sought allocation of eight weekly frequencies for its services between the United States and India via Amsterdam. Polar sought allocation of one weekly frequency for its service to India via Helsinki, Finland. United sought allocation of 14 weekly frequencies for its U.S.-India services via London.

XX Waiver of the dormancy requirement (Northwest and United)

XX Waiver of the 60-day advance filing requirement set forth in 14 CFR 377.10(c)

Annex 4 of the U.S.-Russia Agreement provides that U.S. carriers collectively may overfly and stop for non-traffic purposes on a total of 28 flights per week (14 flights eastbound and 14 flights westbound) between points in Europe and the Indian subcontinent on approved Air Traffic Services (ATS) routings. These rights may be used in the operation of scheduled or charter air services. Although the Annex to the Agreement has expired, it has continued to be invoked by both parties as an operative source of rights governing the relationship.

The Department granted these overflight allocations to the carriers last year after the carriers stated that they were now usable as a result of the Federal Aviation Administration's determination to amend partially its prohibition on flights operating over Afghanistan by approving one ATS routing--specifically Afghanistan's Wahkan Corridor. See Order 97-7-33. The frequency allocations were subject to our standard dormancy condition. Under that condition, the frequencies would revert automatically to the Department if not used for a period of 90 days. Northwest and United subsequently determined that the Wahkan Corridor was not a feasible alternative to operating their existing services, and their allocations automatically reverted to the Department pursuant to the dormancy condition.¹ Polar has continued to use its overflight allocation. The FAA recently amended its prohibition to permit overflights over Afghanistan on an additional ATS routing (See SFAR 67, 63 FR 26684, May 13, 1998).

(See Reverse Side)

¹ Two of Northwest's allocated frequencies were not subject to the dormancy condition. See Order 97-7-33.

Northwest and United have both requested continued allocation of their overflights, and a waiver of the dormancy requirement or an extension of the standard dormancy period.² They state that the FAA is revisiting its Afghanistan overflight restrictions and may soon widen the Afghanistan airspace, making available a more usable flight path over Afghanistan; and that, in these circumstances, the Department should waive or amend the dormancy requirement until a viable flight path becomes available.³ They further state that they will review their operations to determine the feasibility of the overflight allocations after the FAA makes a decision with respect to the Afghanistan airspace.

No answers were filed to the applications.

DOT Analyst: Gerald Caolo (202) 366-2406

Applicant reps: Megan Rae Poldy (202)-842-3193
Northwest Airlines

Kevin P. Montgomery (202) 785-1995
Polar Air Cargo

Joel Stephen Burton (202) 637-9130
United Air Lines

DISPOSITION

XX Granted frequency allocations (subject to conditions, see below):

XX Granted waiver of the advance filing requirement set forth in 14 CFR 377.10(c)

XX Dismissed request for waiver of the dormancy requirement, see below

The above action was effective when taken: June 16, 1998, thru June 16, 1999

XX Under assigned authority (14 CFR 385) by: **Paul L. Gretch, Director**
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of this action.)

XX Authority granted is consistent with the Air Transport Agreement between the United States and the Russian Federation entered into force January 14, 1994. Although the Annexes to the Agreement have expired, they have continued to be invoked by both parties as the operative source of rights governing the relationship.

(See Next Page)

² In their applications, Northwest and United characterized their applications as renewals. However, since the allocation to Northwest for six of its eight frequencies and to United for 14 frequencies granted June 16, 1997 (confirmed by Order 97-7-33) was subject to our standard dormancy condition, and since both carriers did not use their frequencies for more than 90 days, the frequencies automatically reverted to the Department on the 91st day they were not used. Therefore, we have considered the Northwest and United applications for these frequencies as requests for reallocation of their previous frequency rewards. As no dormancy condition was attached to the remaining two frequencies allocated Northwest, we have considered this portion of its application as a request for renewal.

³ In addition, Northwest requested an indefinite waiver from the dormancy condition for the allocations at issue here and United requested that the standard dormancy period be extended from 90 to 150 days.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holders' certificates of public convenience and necessity

Conditions: Consistent with our standard practice, the overflight allocations awarded are subject to the condition that they will expire automatically and the overflights will revert back to the Department if they are not used for a period of 90 days. As with its previous allocation, we will not impose the dormancy condition on the two frequencies allocated Northwest that it has stated that it would operate on an occasional basis.

Remarks: We decided to grant all of the applications. Polar is using its allocation and we found that continued allocation of its weekly frequency was in the public interest. We also found that allocations to Northwest and United were warranted. Subsequent to the filing of these applications and as discussed above, the FAA again amended its flight prohibition over Afghanistan to permit another ATS routing that is adjacent to the Wahkan Corridor. This new routing could facilitate use by Northwest and United of the requested Russian overflight frequencies. We believe that Northwest and United should be permitted another opportunity to use the overflights under these new circumstances.

We have decided to dismiss the requests of Northwest and United to waive or amend the dormancy condition. The carriers had sought the waiver prior to the FAA's action expanding the Wahkan Corridor. Given the FAA's decision to widen the permissible ATS routing over Afghanistan, we regard the waiver as no longer necessary. Should the carriers subsequently experience problems with viable routings, they would be free to seek relief from the dormancy condition at that time.

NEW



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

March 31, 1998

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of Northwest Airlines, Inc. filed 3/19/98 in Docket OST-98-3653 for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between a point or points in the United States, directly and via intermediate points and a point or points in Japan, and beyond.

Applicant rep.: Megan Rae Poldy, 202-842-3193 DOT analyst: Terri Bingham, 202-366-2390

DISPOSITION

XX *Granted (Subject to conditions, see below)*

The above action was effective when taken: March 31, 1998, through March 31, 2000, or until 90 days after final Department action on Northwest's corresponding certificate application in Docket OST 98-3441, whichever occurs earlier.

XX *Under assigned authority (14 CFR 385) by:*

*Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)*

XX **The authority granted is consistent with the 1998 U.S.-Japan Memorandum of Understanding¹**

(See Reverse Side)

¹ On January 30, 1998, delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understanding 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 MOU was signed on March 14, 1998, by Secretary Slater and Japanese Foreign Minister Fujii, also with provisional effectiveness. (Note: Subsequent to the original posting of this Notice, the U.S.-Japan Agreement was formally concluded by an Exchange of Notes dated April 20, 1998.)

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX **Holder's certificate of public convenience and necessity**

XX **Standard Exemption Conditions (attached)**

Remarks: In addition to the authority requested, we also *sua sponte* granted Northwest authority to integrate its Japan services with its other services authorized by certificate or exemption.

Conditions: We made the authority granted subject to the following conditions:

(a) The authority granted to serve intermediate and beyond points in conjunction with Japan service is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority, by virtue of either the present action or other action of the Department, and is subject to all conditions attached to that authority.

(b) Any service provided under the route integration authority granted shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Northwest rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Northwest notifies us of its intent to serve such a market and unless and until the Department has completed any necessary 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 Northwest's authority by virtue of the route integration exemption granted here, but that are not then being used by Northwest, the holding of such authority by route integration will not be considered as providing any preference for Northwest in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

By Notice dated March 23, 1998, we required that answers to Northwest's application be filed by March 25, 1998, and that replies be filed by March 27, 1998. Delta Air Lines, Inc. filed an answer in opposition, stating that the broad authority requested is more appropriately granted by certificate, and that, consistent with normal Department policy, any exemption authority granted should be limited to the city-pair markets Northwest proposes to serve. Northwest filed a reply, stating that award of blanket exemption authority to Northwest is fully consistent with the Department's policy with respect to route awards under the U.S.-Japan MOU and that the Department's February 3 Notice specifically announced its intention to grant incumbent carriers any additional authority necessary on an expedited basis in order to implement the new rights under the MOU.

We decided to grant the broad exemption authority sought by Northwest. We have on a number of occasions granted broad exemption authority to carriers for foreign air transportation operations, including awards for services under the recent U.S.-Japan MOU. See, *e.g.*, the exemption award to Federal Express in Docket OST-98-3436 for Japan and to Spirit Airlines for U.S.-Canada authority in Docket OST-98-3403. In these circumstances, we found no basis to withhold the authority requested by Northwest.

NEW



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

March 31, 1998

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of United Air Lines, Inc. filed 3/13/98 in Docket OST-98-3624 for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between a point or points in the United States, directly and via intermediate points and a point or points in Japan, and beyond.

Applicant rep.: Jeffrey Manley, 202-637-9057 DOT analyst: Terri Bingham, 202-366-2390

DISPOSITION

XX *Granted (Subject to conditions, see below)*

The above action was effective when taken: March 31, 1998, through March 31, 2000, or until 90 days after final Department action on United's corresponding certificate application in Docket OST 96-1131, whichever occurs earlier.

XX *Under assigned authority (14 CFR 385) by:*

*Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)*

XX **The authority granted is consistent with the 1998 U.S.-Japan Memorandum of Understanding¹**

(See Reverse Side)

¹ On January 30, 1998, delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understanding 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 MOU was signed on March 14, 1998, by Secretary Slater and Japanese Foreign Minister Fujii, also with provisional effectiveness. (Note: Subsequent to the original posting of this Notice, the U.S.-Japan Agreement was formally concluded by an Exchange of Notes dated April 20, 1998.)

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Remarks: In addition to the authority requested, we also *sua sponte* granted United authority to integrate its Japan services with its other services authorized by certificate or exemption.

Conditions: We made the authority granted subject to the following conditions:

(a) The authority granted to serve intermediate and beyond points in conjunction with Japan service is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority, by virtue of either the present action or other action of the Department, and is subject to all conditions attached to that authority.

(b) Any service provided under the route integration authority granted shall be consistent with all applicable agreements between the United States and the foreign countries involved.

Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon United rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless United notifies us of its intent to serve such a market and unless and until the Department has completed any necessary selection and 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 United's authority by virtue of the route integration exemption granted here, but that are not then being used by United, the holding of such authority by route integration will not be considered as providing any preference for United in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

By Notice dated March 23, 1998, we required that answers to United's application be filed by March 25, 1998, and that replies be filed by March 27, 1998. Delta Air Lines, Inc. filed an answer in opposition, stating that the broad authority requested is more appropriately granted by certificate, and that, consistent with normal Department policy, any exemption authority granted should be limited to the city-pair markets United proposes to serve. United filed a reply, stating that award of blanket exemption authority to United is fully consistent with the Department's policy with respect to route awards under the U.S.-Japan MOU, and that Delta has presented no reason why United should not be granted a similar award.

We decided to grant the broad exemption authority sought by United. We have on a number of occasions granted broad exemption authority to carriers for foreign air transportation operations, including awards for services under the recent U.S.-Japan MOU. See, *e.g.*, the exemption award to Federal Express in Docket OST-98-3436 for Japan and to Spirit Airlines for U.S.-Canada authority in Docket OST-98-3403. In these circumstances, we found no basis to withhold the authority requested by United.

NEW



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

May 28, 1998

This serves as interim notice to the public of the action, described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible

Application of: **United Parcel Service Co.** filed **4/17/98** in: **Docket OST-98-3754** for:

XX Allocation to UPS of scheduled all-cargo service opportunities under the April 8, 1998 U.S.-France Memorandum of Consultations.

UPS also requests that it be named as the additional U.S. all-cargo air carrier authorized to serve Paris.¹

UPS states that it plans to operate service between the United States and Paris, serving Cologne, Germany, as either an intermediate or beyond point, and that UPS already holds the necessary underlying economic authority to operate this service.

United Air Lines, Inc., had filed a mutually exclusive request for the available U.S.-France scheduled all-cargo service opportunities on April 17, 1998, as part of a broader application in Docket OST-98-3732; however on May 18, 1998, United filed a motion in that docket to dismiss the portion of its application requesting the all-cargo authority.

Applicant representative: **David L. Vaughan (202) 955-9600** DOT Analyst: **John Quay (202) 366-1052**

DISPOSITION

XX Granted, subject to conditions (See below).

The above action was effective when taken: **May 28, 1998**, and will remain in effect as long as UPS continues to hold the necessary underlying authority to operate all-cargo services in the U.S.-France market.

XX Under assigned authority (14 CFR 385) by:

PAUL L. GRETCH, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness
of this action.)

(See Reverse Side)

¹ On April 8, 1998, the United States and France signed a Memorandum of Consultations (MOC) and initialed the text of a framework for a new Air Transport Agreement (Agreement). The MOC also provided that each Party would permit operations consistent with the Agreement on the basis of comity and reciprocity, pending finalization of the Agreement. Under the Agreement the United States may immediately designate two additional airlines for all-cargo services and may authorize one of these two airlines for operations to all points in France, including Paris. No applications were filed for the non-Paris all-cargo service opportunity. (Note: Subsequent to the original posting of this Notice, the U.S.-France Agreement formally entered into force following its signature on June 18, 1998.)

XX Authority granted is consistent with the Memorandum of Consultations signed April 8, 1998, between the United States and France and the aviation agreement between the United States and Germany.

Except to the extent exempted or waived, this authority is subject to the terms, conditions and limitations indicated: XX **Holder's certificate of public convenience and necessity**
XX **April 8, 1998, U.S.-France MOC**

Remarks: To the extent that UPS plans to serve intermediate and/or beyond points for which it does not currently hold the necessary underlying economic and route integration authority, it will need to seek such additional authority before it commences such intermediate and/or beyond operations in conjunction with its U.S.-France all-cargo operations.