



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

Issued by the Department of Transportation on May 3, 1999

**NOTICE OF ACTION TAKEN -- DOCKET OST-99-5286**

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This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **Delta Air Lines, Inc.** filed **3/29/99** for:

- XX** Allocation of five weekly Russian overflight frequencies on a continuing basis; and
- XX** Interim allocation of nine weekly Russian overflight frequencies, currently allocated to United Air Lines.

**Delta would use the 14 weekly overflight frequencies (five on a continuing basis and nine on an interim basis) for operation of its U.S.-Frankfurt-Mumbai service.<sup>1</sup>**

United Air Lines filed an answer to Delta's application. Delta filed a reply. United filed a response to Delta's reply and Delta filed a letter in response to United's comments.<sup>2</sup>

Annex IV (Overflights) of the 1999 U.S.-Russia aviation agreement provides that, until January 22, 2001, U.S. carriers may overfly and stop for non-traffic purposes on 28 flights per week (14 flights eastbound and 14 flights westbound) for scheduled combination and/or all-cargo services between points in Europe and the Indian subcontinent on Air Traffic Services routings approved for international services. Of these 28 flights, 23 already have been allocated to U.S. carriers: Northwest – eight frequencies, United – 14 frequencies, and Polar – one frequency. Five flights remain unallocated.<sup>3</sup>

Delta states that in addition to the five currently unallocated overflight frequencies, there are more frequencies available for allocation because United has suspended direct service to India and is not using any of its 14 weekly overflight frequencies. In light of these circumstances, Delta requests that it be allocated the five weekly (currently unallocated) frequencies on a continuing basis for its India services. It also requests that it be allocated nine of United's 14 weekly overflight frequencies on an interim basis, pending United's resumption of India services using its 14 (currently allocated) weekly overflight frequencies.

United takes no position on the five overflight frequencies requested by Delta for use on a continuing basis. With respect to the nine additional overflight frequencies requested by Delta, United states that it has firm plans to use its overflight allocation beginning October 31, 1999, when it resumes its India services. Accordingly, United states that it does not object to an interim allocation to Delta provided that (a) the allocation is for a definite period that would terminate on October 30, 1999, to coincide with United's resumption of India service; and (b) the

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<sup>1</sup> Delta states that these flights would operate over Russian airspace, but would not overfly Afghanistan airspace over which the Federal Aviation Administration has prohibited U.S. carrier operations.

<sup>2</sup> United's response to Delta's reply was accompanied by a motion for leave to file an otherwise unauthorized document. We grant the motion.

<sup>3</sup> On March 16, 1999, the Department issued a Notice requesting that U.S. carriers interested in using new U.S.-Russia service opportunities, including available overflight rights, file applications with the Department in this Docket (OST-99-5286). We will handle applications filed for the other service opportunities cited in our March 16 Notice by separate notice(s) or order(s).

allocation is made subject to the condition that it is not an “activity of a continuing nature” for purposes of 5 U.S.C. §558(c) and 14 CFR Part 377. To facilitate authorizations from the Russian Federation, United requests that any interim allocation granted Delta make clear that the frequencies revert to United after October 30, 1999.

In response to United’s comments, Delta states that it accepts the conditions requested by United with respect to an interim allocation of the nine overflight frequencies; specifically, that Delta’s interim allocation of the nine overflight frequencies will revert to United when United resumes its India service, currently scheduled for October 31, 1999; and Delta’s interim allocation will not be considered an “activity of a continuing nature” for purposes of 5 U.S.C. §558(c) and 14 CFR Part 377. In addition, Delta requests that the Department require United to notify the Department and Delta at least 30 days prior to the expiration of Delta’s authority to assess whether or not United’s plans have changed.

Applicant rep: **Robert E. Cohn (202) 663-8060** DOT Analyst: **Michael D. Bodman (202) 366-9667**

### **DISPOSITION**

**XX** Granted, subject to conditions (see below).

The above action with respect to the allocation of five weekly overflight frequencies was effective when taken: **May 3, 1999**, and will remain in effect indefinitely, subject to the conditions below.

The above action with respect to the interim allocation of nine weekly overflight frequencies was effective when taken: **May 3, 1999**, and will expire on **October 30, 1999**, subject to the conditions below.

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

**XX** The authority granted is consistent with the 1999 aviation agreement between the United States and the Russian Federation.

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.

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**Conditions:** Consistent with our standard practice, allocation of the five overflight frequencies on a continuing basis is subject to the condition that it will expire automatically and the overflight frequencies will revert to the Department if they are not used for a period of 90 days.

The interim allocation of the nine overflight frequencies now held by United is subject to the following conditions:

- (a) Delta’s temporary allocation of the overflight frequencies does not constitute an “activity of a continuing nature” for purposes of 5 U.S.C. §558(c) and 14 CFR Part 377;<sup>4</sup>
- (b) The frequencies will revert to United effective October 31, 1999; and
- (c) The frequencies will expire automatically and revert to the Department if they are not used for a period of 90 days, subject to condition (b) above.

To facilitate a smooth transition from the interim allocation, we require that United notify the Department (in Docket OST-99-5286) and Delta no later than October 1, 1999, confirming that United will require the use of its allocated Russian overflight frequencies on October 31, 1999, for the resumption of United’s India service.

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<sup>4</sup> We note that Delta has stated that it does not object to this or any of the other conditions requested by United.

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Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; and (2) grant of the authority was consistent with the public interest. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this order is available on the World Wide Web at  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*