



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

SERVED MAY 17, 1996

Issued by the Department of Transportation
on the 13th day of May, 1996

1996 U.S.-JAPAN ALL-CARGO SERVICE PROCEEDING

Docket OST 96-1366

ORDER INSTITUTING PROCEEDING

SUMMARY

By this order we institute the **1996 U.S.-Japan All-Cargo Service Proceeding**, to select one primary and one backup carrier to provide scheduled all-cargo service in the U.S.-Japan market.

BACKGROUND

Under an April 1996 Memorandum of Understanding between the United States and Japan, the Government of the United States may designate one additional airline to operate scheduled all-cargo services between any point or points in the United States and one point in Japan other than Tokyo, and beyond to one point without local traffic rights between the point in Japan and the beyond point. The designated carrier must be a carrier not operating scheduled combination or all-cargo services between the United States and Japan as of the date of the signature of the 1996 MOU.¹ The selected carrier will be permitted to operate up to six weekly frequencies. For the purposes of applying this frequency limitation, any all-cargo flight from either country to the other country, and a return flight in the opposite direction, shall together constitute one frequency regardless of the number of traffic stops made in either country or whether or not the flight operates beyond the other country. If an airline does not operate a return flight, the flight in one direction shall still constitute one frequency.

DECISION

¹ U.S. carriers currently operating scheduled combination and/or all-cargo services to Japan include American, Continental Micronesia, Delta, Federal Express, Northwest, United, and United Parcel Service. Therefore, these carriers are not eligible, under the terms of the MOU, to apply for the newly available all-cargo route opportunity. The MOU includes separate provisions that expand the all-cargo services which incumbent and current MOU all-cargo carriers may operate.

The MOU makes available a valuable new opportunity for U.S. carriers to provide scheduled all-cargo services between the United States and Japan. Therefore, we have decided to institute the **1996 U.S.-Japan All-Cargo Service Proceeding**, to select a primary and a backup carrier to provide scheduled all-cargo air services between the United States and Japan.

We invite all interested U.S. certificated carriers not currently operating scheduled combination and/or all-cargo services in the U.S.-Japan market to file applications with the Department under the procedural schedule set forth in this order.² Civic parties are also welcome to file comments or evidentiary materials in this proceeding.³

Whether certificating a carrier to provide scheduled all-cargo service in the Japan market is required by the public convenience and necessity will not be at issue. The additional service opportunity represents a valuable right that was obtained through negotiations in exchange for operating rights for Japanese carriers. The public interest clearly calls for use of these rights.

As we have done with other limited entry routes, we will issue the authority in this proceeding in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41110. In accordance with our regulations governing the duration of certificate authority in limited-entry markets,⁴ the duration of primary authority shall be limited to five years and backup authority shall be limited to one year. Consistent with our practice in competitive proceedings, we will subject the authority awarded to a startup condition, the duration of which will be determined by the record of this proceeding.

In selecting carriers for this authority our primary objective will be to maximize the public benefits that will result from the award of this new authority and enhance the competitive environment in the U.S.-Japan cargo market. In this regard, we will consider which applicant will be most likely to offer and maintain the best service for the shipping public. While service proposals remain an element of consideration in the selection process, we recognize that frequency levels are constrained by the terms of the MOU. We will consider the effect of the applicants' service proposals on the overall market structure and level of competition in the U.S.-Japan market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In this regard, we will consider, among other things, route integration, which refers to a carrier's ability to flow freight to and from points behind its proposed hub or gateway. Flow or feed capability supports the viability of a carrier's proposed service and also affects the overall number of potential customers who might benefit from that service. In addition, we will consider other factors historically used for carrier selection where they are relevant.

With respect to backup authority, it is possible that applicants may propose service from different U.S. gateways. Should this occur, we conclude that the backup authority at issue here need not be limited to the gateway where primary service is awarded. The considerations that lead to the selection of a carrier and gateway are entirely interrelated, and a gateway's selection for primary service by a particular carrier does not mean that a different carrier at the same city would necessarily represent the next-best alternative. Moreover, the route rights under the Agreement provide for service from any point or points in the United States to Japan. Our primary focus here

² We note that World Airways already has filed a certificate application for U.S.-Japan all-cargo services (Docket OST-95-679). If World chooses, it may amend its current application and file a motion to consolidate that application into this proceeding by the date specified in this order.

³ As we do not propose to set this case for an oral evidentiary hearing, it is not necessary for civic parties to file petitions for leave to intervene in order to file comments or exhibits in this case. However, we remind civic parties that for any filings to be considered as part of the formal record, those filings must be served on all participants in the proceeding and must meet the filing requirements set forth in this order.

⁴ 14 CFR 399.120.

in awarding backup authority is to ensure effective use of the available route rights in the event that the primary carrier does not institute service or discontinues service during its first year of operations, not to ensure the continuation of service from a particular gateway.

PROCEDURES AND TIMETABLE

It is our policy to tailor our procedures to the scope and complexity of the issues before us. We believe that written, non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750) are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We find no material issues of fact that would warrant an oral evidentiary hearing in this case.

In order to develop a comparative basis for selecting among the applicants in this proceeding, we will require submission of certain evidentiary information. We expect all applicants to comply fully with the evidence request and evidentiary procedures established in this order. An applicant's failure to do so could bear negatively on the consideration accorded to that applicant's evidentiary sub-missions. Furthermore, depending on the circumstances, it could lead to nonadmission of those submissions or even to that applicant's disqualification from this proceeding. In addition to the materials being requested from the applicants, the Department will make certain information available to the parties to facilitate preparation of their proposals.

A. APPLICATIONS

All applications and submissions must be filed in the proceeding docket established herein. Initial applications should include, at a minimum, the proposed route, number of frequencies, equipment types and proposed startup date. The initial applications, however, need not include all of the economic data requested below. That material should be submitted at the Direct Exhibit stage of this proceeding.

B. APPLICANT EVIDENCE TO BE INCLUDED IN DIRECT EXHIBITS

Each applicant should submit the following information for the forecast period, the twelve months ending **December 31, 1997**. Submissions should contain specific factual information so that further clarification is unnecessary. The sources and methodology used for all traffic estimates and adjustments to the Department's traffic data should be clearly explained.⁵

1. Proposed schedules showing startup dates, complete routings from origin to destination of all flights, days scheduled, equipment types, and variation of frequencies/routings by traffic season, if applicable.
2. Based on the proposed schedules, a cargo traffic forecast (revenue tons), by direction, for the proposed U.S.-Japan single-carrier services, indicating the data source of all traffic projections.⁶ This should include separate traffic estimates for:⁷

⁵ All data and responsive information must be given in U.S. dollars and pounds/tons. An applicant may choose, in addition, to present evidence using other units of measure; however, it must provide the data in the standard measure for comparative purposes.

⁶ Applicants should specify the payload capacity used based on the stage lengths and full routings involved in determining their estimates.

⁷ The base year for traffic forecasting purposes should be the twelve months ended December 31, 1995. The forecast year is the twelve months ending December 31, 1997.

(a) single-plane U.S.-Japan and single-plane U.S.-Third country traffic to be carried; (b) behind-gateway traffic (excluding single-plane traffic) (*i.e.*, U.S.-Japan; U.S.-Third Country), by direction, that the applicant expects to flow over the proposed U.S. gateway(s) or any single-plane behind gateway points to be served, and the source of such estimates;

(c) any Third Country-Japan traffic which would be carried on the proposed service (*e.g.* South America-Japan); and (d) any Third-

Country -Third-Country traffic that would be carried on the proposed service (e.g. South America - Southeast Asia).⁸

Forecasts should also specify the capacity available on the proposed services for U.S.-Japan and U.S.-Third Country, Third Country-Japan, and Third Country-Third Country traffic and the percentage of express/small package and general air freight expected to be carried. If mail is expected to be carried, this should also be shown separately.

3. A statement as to whether the aircraft to be used in the proposed schedules are (a) on hand or (b) on order. If on hand, indicate where, and the extent to which, those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate specific plans for achieving compliance.
4. For each U.S.-Asia/Pacific market that the applicant has authority (either certificate or exemption) to provide scheduled all-cargo service, provide the number of scheduled flights operated, by direction, by month, for the period **January 1, 1995, through December 31, 1995.**
5. A statement as to whether the applicant, if selected for the primary award, would accept a condition on the authority requiring service by a date specified by the Department, and if so, what startup period should be imposed.
6. A statement as to whether the applicant, if not selected for the primary award, would accept an award for backup authority.
7. A statement as to whether the applicant's services will be operated in conjunction with any cooperative arrangement (e.g. wet lease, code-share) with any other U.S. carrier or any foreign carrier. If such services are to be operated, a detailed explanation regarding such operations must be provided as well as a copy of the cooperative agreement.

⁸ For example, should an applicant propose the following single-plane service pattern: Denver-Seattle-Sapporo-Seoul, for the westbound direction, we would expect traffic (tons carried) on this service to be reported separately as follows:

Seattle-Sapporo

Denver-Sapporo

Seattle-Seoul

Denver-Seoul

Total all other US cities-Sapporo

Total all other US cities-Seoul

Total Third Country (e.g. South America)-Sapporo

Total Third Country (e.g. South America)-Seoul

Total Third Country (e.g. South America)-Total Third Country (e.g. Southeast Asia).

For the eastbound direction the markets would be reversed

Sapporo-Seattle; Sapporo-Denver *et cetera*.

C. DOT EVIDENCE

Pursuant to sections 241.19-6 and 399.100 of the Department's regulations, it is determined that the Department's T-100 data for cargo operations between the United States and the Japan for the period **January 1, 1993, through December 31, 1995** are material and relevant to a final determination of the issues in the case. We are releasing those data to the U.S. carrier applicants in this proceeding. Those parties to the proceeding will be free to use those data to the extent they deem necessary in this proceeding.

The Economic & Financial Analysis Division of the Office of Aviation Analysis will make available to the parties the following data, to the extent possible, in the form of information responses:

1. Schedule T-100 and T-100(f) nonstop segment data (scheduled and nonscheduled), including, *inter alia*, belly-cargo traffic, by carrier (U.S. and foreign) by month by direction, beginning **January 1, 1993, through December 31, 1995**, between the United States and Japan;
2. Schedule T-100 and T-100(f) on-flight market data (scheduled and nonscheduled), including, *inter alia*, belly-cargo traffic, by carrier (U.S. and foreign) by month by direction, beginning **January 1, 1993, through December 31, 1995**, between the United States and Japan.

PROCEDURAL SCHEDULE

In order to facilitate a prompt decision in the case we intend to conduct the proceeding here according to the following schedule:

Applications, Amended Applications, Motions to consolidate: ⁹	May 28, 1996
DOT IRs: ¹⁰	May 28, 1996
Direct Exhibits:	June 11, 1996
Rebuttal Exhibits:	June 25, 1996
Briefs:	July 9, 1996

All dates indicated are delivery dates. An original and four copies of all submissions are to be received at the Department's Docket Section no later than the dates indicated.¹¹ Parties are free to make service by facsimile.

⁹ Motions to consolidate are necessary only for carriers that seek to consolidate previously filed applications into this proceeding. Carriers applying for the first time should file their applications directly into the proceeding docket established by this order.

¹⁰ Due to the volume of the Department's Information Responses, we will be unable to print and distribute copies to each party. One copy of these materials will be made available for the parties' use in Room 4201, 400 Seventh Street, S.W., Washington, D.C. In addition, the Department will issue on request copies of its information responses on computer diskettes. Parties who wish to receive such diskette should contact the Economic & Financial Analysis Division at 202-366-2344. Use of the data in the Department's Information Responses (either hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (i.e., those that have filed applications or comments) to this proceeding.

¹¹ The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

Carriers should also provide the Department with a computer diskette of all information responses, exhibits, and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Economic and Financial Analysis Division of the Office of Aviation

ACCORDINGLY,

1. We institute the **1996 US.-Japan All-Cargo Service Proceeding**, which will be decided by non-oral hearing procedures under Rule 22a(d) of our regulations (14 CFR 302.22a(d));

2. The proceeding instituted in ordering paragraph 1 shall include consideration of the following issues:

a. which primary carrier and which backup carrier should be authorized to provide scheduled all-cargo services between the United States and Japan as set forth in the 1996 Memorandum of Understanding between the United States and Japan;

b. what blind-sector beyond authority, including route integration authority, should be awarded in conjunction with the Japan authority awarded in this proceeding;

c. what terms, conditions and limitations, if any, should be placed on any authority awarded in this proceeding; carriers are specifically asked to comment on the length of a startup condition and whether the carriers will accept a backup award should they not be selected as the primary carrier;

3. Petitions for reconsideration of this order shall be due no later than four calendar days from the date of service of this order; answers to any petitions shall be due no later than three calendar days thereafter; and

4. We will serve this order on all U.S. certificated air carriers, the Ambassador of Japan in Washington, D.C.; and the Department of State (Office of Aviation Negotiations).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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

Analysis, X-55, Room 6401, 400 Seventh Street, S.W., Washington, D.C. 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel ® (version 5.x or earlier), Lotus 1-2-3 ® (version 3.x or earlier), Microsoft Word ® (version 6.x or earlier), or WordPerfect ® (version 5.2 or earlier) should be filed in their native formats. Parties may also file exhibits or briefs via e-mail to our Internet address: dot_dockets@postmaster.dot.gov. Files sent via e-mail should be ASCII (text only) format. Parties using other software may either (1) file IRs, exhibits and briefs in the foregoing formats, or (2) contact Mr. Michael A. Lane at 202-366-2352 or Mr. Stephen H. Davis at 202-366-1049 for format compatibility information or to seek a waiver, which will be considered on *arad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record.