

Order 97-7-33

Served: August 5, 1997



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

Issued by the Department of Transportation
on the 30th day of July, 1997

Applications of

American Airlines, Inc.

Continental Airlines, Inc.

Delta Air Lines, Inc.

Northwest Airlines, Inc.

Polar Air Cargo, Inc.

Scandinavian Airlines System

United Air Lines, Inc.

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

**Dockets OST-97-2419
Undocketed**

**OST-97-2447
OST-97-2493**

**OST-96-1672
OST-97-2614**

**OST-97-2609
OST-97-2610 (50326)**

OST-97-2610 (50326)

OST-96-1088

**OST-97-2358
OST-97-2610 (50326)**

ORDER

The captioned U.S. air carriers and foreign 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 41301, 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;
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.

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

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, 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)

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

July 1, 1997

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 **American Airlines, Inc.** filed 4/30/97 and 5/1/97 in Docket OST-97-2419 and Undocketed (amended 6/18/97¹) 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 and Cuiaba, Curitiba, Florianapolis, Fortaleza, Foz do Iguacu, Goiania, Joinville, Natal, Ribeirao Preto, and Vitoria, Brazil, and to integrate this authority with its existing certificate authority on Route 389 and its existing U.S.-Brazil exemption authority. American intends to operate this service pursuant to a code-share arrangement with Transportes Aereos Meridionais, S.A. (TAM) on flights operated by TAM, commencing August 1, 1997.

XX Statement of Authorization under 14 CFR Part 207 for:²

Display TAM's "JJ" designator code on flights operated by American in the following markets:

Gateway to gateway: Miami-Sao Paulo/Rio de Janeiro/Manaus/Belo Horizonte; New York (JFK)-Sao Paulo/Rio de Janeiro/Belo Horizonte; Chicago and Dallas/Fort Worth-Sao Paulo/Rio de Janeiro

Connecting services: Miami to/from: Atlanta/Boston/Chicago/Denver/Detroit/Dallas/Fort Worth/Los Angeles/New Orleans/New York City (JFK/LGA/EWR)/Orlando/Philadelphia/Houston (IAH/HOU)/San Francisco/San Juan PR/Seattle/Washington DC (DCA/IAD/BWI); New York (JFK) to/from: Boston/Dallas/Fort Worth/Los Angeles/San Diego/Miami/Philadelphia/San Francisco/San Juan PR/Washington DC (DCA/IAD/BWI); Dallas/Fort Worth to/from: Atlanta/Boston/Chicago/Detroit/Houston (IAH/HOU)/Los Angeles/Miami/New Orleans/Las Vegas/San Diego/Seattle/New York City (JFK/LGA/EWR)/Orlando/Philadelphia/San Francisco/Vail/Washington DC (DCA/IAD/BWI)/Denver/Minneapolis/San Juan PR; Chicago to/from: Atlanta/Boston/Dallas/Fort Worth/Detroit/Houston (IAH/HOU)/Los Angeles/Miami/New Orleans/Las Vegas/San Diego/Seattle/New York City (JFK/LGA/EWR)/Orlando/Philadelphia/San Francisco/Vail/Washington DC (DCA/IAD/BWI)/Denver/Minneapolis/San Juan PR

(See Reverse Side)

¹ By letter dated June 18, 1997, American and TAM amended their Statement of Authorization request to include San Diego, which had been omitted from the application, but was listed among the cities to be served in the agreement. They state that the amendment is to conform the application to the code-share agreement.

² American's Statement of Authorization application includes its regional affiliates: Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc., and Wings West Airlines, Inc.

The Joint Applicants state that neither American's code-share services in Brazil nor TAM's code-share services in the United States will carry local traffic between domestic points.

United filed an answer stating that it did not object to the above application as long as its own application for code-sharing operations in the U.S.-Brazil market with Varig was also granted.

Applicant rep.: Carl B. Nelson, Jr. 202-496-5647 *DOT analyst:* Linda Senese, 202-366-2367

DISPOSITION

XX *Granted in Part and subject to conditions (See below)*

XX *Deferred in Part, as follows:* Exemption authority to serve Goiania, Joinville, Riberao Preto, and Vitoria, Brazil. Statement of Authorization to serve Dallas/Fort Worth, Minneapolis/St. Paul, New Orleans, Philadelphia, and Vail on a code-share basis with TAM.

XX *Balance Dismissed.*

The above action was effective when taken: **July 1, 1997,** through **July 1, 1998**

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 aviation agreement between the United States and Brazil.**

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)**

Special Remarks: The authority granted is coextensive with the duration of the statement of authorization and exemption granted TAM on July 1, 1997.

Grant/Deferral: Under an October 1996 Memorandum of Consultations (MOC) between the United States and Brazil, U.S. carriers may conduct code-share-only operations to ten Brazilian points in addition to those already named in the U.S.-Brazil aviation agreement (i.e., Manaus, Sao Paulo, Rio de Janeiro, Belem, Belo Horizonte, Brasilia, Porto Alegre, Recife and Salvador). The Brazilian code-share-only points are to be selected by the United States. Similarly, Brazilian carriers may conduct code-share operations to ten U.S. points in addition to those already named in the agreement (i.e., New York, Atlanta, Miami, Orlando, Detroit, Washington/Baltimore, Houston, Chicago, Los Angeles, San Francisco, and San Juan). The U.S. code-share-only points are to be selected by Brazil. In addition to the American/TAM code-share application, United and VARIG have proposed code-share operations in the U.S.-Brazil market. With respect to code-share operations involving the 10 additional U.S. and 10 additional Brazilian code-share-only points provided for under the October 1996 MOC, the combined code-share requests of American/TAM and United/VARIG exceed the number of U.S. and Brazilian code-share-only points available.

(See Next Page)

Therefore, we decided to grant both of the joint applications to the extent that they involve the same new U.S. and Brazilian code-share-only points, i.e., Cuiaba, Curitiba, Florianapolis, Fortaleza, Foz do Iguaca, and Natal for the Brazilian code-share-only points; and Denver, Las Vegas, Seattle, San Diego, and Boston, for the U.S. code-share-only points. (We have addressed the United/VARIG application in a separate notice, issued concurrently.) The Statement of Authorization to American to put TAM's code on its flights to the five U.S. code-share cities is subject to the condition that such authority not be exercised until the Government of Brazil notifies the United States of its selection of these cities as provided for under the MOC. We deferred action on the balance of each carrier's request to the extent it involved service to other Brazilian and U.S. code-share-only points. We intend to seek through diplomatic channels to expand the number of code-share-only points that may be served, and thereby to avoid the need for competitive selection procedures. However, should it prove necessary, we will proceed to consider what procedures to adopt to select the four remaining additional Brazilian points for code-share-only service.

Dismissal: We dismissed, without prejudice, each carrier's application (American and TAM) to the extent it requested broad authority to code share between other points on both carriers' authorized routes, as mutually agreed upon, and to the extent it requested authority between any U.S. point and any Brazilian point listed in their joint application without specifically indicating how such code-share services would be conducted. It is the Department's policy to grant code-sharing authority only for the services actually proposed by the carriers (*see, e.g.*, United/Lufthansa code share, Order 94-4-43 and Delta/Aeromexico code share, Order 97-1-15). The carriers are free to seek authority for additional markets as their plans develop.

Conditions: The code-sharing operations authorized herein 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 foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere, and 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, and that the operator 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.

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 our award of the route integration authority requested should be construed as conferring upon American rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless American 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 American's authority by virtue of the route integration exemption granted here, but that are not then being used by American, the holding of such authority by route integration will not be considered as providing any preference for American in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.



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

NOTICE OF ACTION TAKEN

June 25, 1997

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 Continental Airlines, Inc. filed 5/5/97 in Docket OST-97-2447 for:
supplemented 5/21/97

XX Waiver 14 CFR 377.10(c)

XX Renew for two years allocation of 7 weekly combination New York-Ecuador frequencies

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 New York/Newark and Guayaquil, Ecuador, via Panama City, Panama.

XX Allocation for two years of 7 weekly combination New York-Ecuador frequencies

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

Scheduled foreign air transportation of persons, property, and mail between New York/Newark and Quito, Ecuador, via Bogota, Colombia, as last authorized by Notice of Action Taken dated February 14, 1996. (See Order 96-7-4).

Applicant rep.: Steven A. Mirmina 202-624-2500 DOT analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX Granted (Subject to conditions, see below)

XX Dismissed waiver request

The above action was effective when taken: June 24, 1997, through June 24, 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 aviation agreements between the United States, on the one hand, and Ecuador, Colombia, and Panama, on the other.

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: Consistent with our standard practice, the frequency allocations granted are subject to the condition that they will expire automatically and the frequencies will revert back to the Department for reallocation if they are not used for a period of 90 days.

Remarks: With respect to its Newark-Guayaquil exemption/allocation request, we dismissed Continental's request for waiver of the 60-day advance filing requirements since we acted on the carrier's renewal application before expiration of the existing authority (July 2, 1997).

NEW



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

NOTICE OF ACTION TAKEN

June 25, 1997

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 **Continental Airlines, Inc.** filed **5/9/97** in Docket **OST-97-2493** for:

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

Scheduled foreign air transportation of persons, property, and mail between New York/Newark and Moscow, Russia, and to combine this authority with Continental's other exemption and certificate authority consistent with applicable international agreements. Continental states that it plans to begin the Newark-Moscow service on April 30, 1998, with DC-10-30 aircraft and needs the authority to begin marketing the service.

Delta Air Lines, Inc. and United Air Lines, Inc. filed answers to the application. Continental filed a reply. Delta stated that it had no objection to grant of Continental's application so long as such approval would not affect Delta's application for additional frequencies to increase its service in the market to a total of 23.5 weekly frequencies (Docket OST 96-1672). United also stated that it had no objection to Continental's requests so long as that approval did not affect United's existing authority to offer code-share service in the U.S.-Russia market. Continental urged the Department to grant its application for Newark-Moscow services.

Applicant rep.: **R. Bruce Keiner, Jr. 202-624-2500** DOT analyst: **Linda Senese, 202-366-2367**

DISPOSITION

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

XX Balance (*i.e.*, request for longer term authority) dismissed

The above action was effective when taken: **June 25, 1997, through June 25, 1998**

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. The Annexes to the Agreement expired May 31, 1997. The Annexes continue to be observed on the basis of comity and reciprocity.

(See Reverse Side)

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

XX Holder's certificate of public convenience and necessity

XX Standard exemption conditions (attached)

Special Remarks: By Notice served June 12, 1997, the Department informed all U.S. certificated air carriers that grant of this application and Delta's application (Docket OST-96-1672) would use all of the frequencies currently available for U.S.-Russian Federation combination services and invited all U.S. carriers interested in serving the market to apply for the available frequencies. The Notice stated that should no other applications be filed by June 19, 1997, we intended to act affirmatively on the Continental and Delta applications. No additional applications were received. By Notice issued contemporaneously, we granted Delta's application to increase its U.S.-Russia services.

Conditions: Consistent with Department practice, the 7 weekly frequencies allocated here are subject to the condition that they will expire automatically and the frequencies will revert back to the Department for reallocation if they are not used for a period of 90 days. The 90-day dormancy period will begin April 30, 1998, Continental's proposed startup date for its Moscow services.

Dismissal: We dismissed that portion of Continental's application to the extent it requested authority for a two-year period. It is our normal practice for limited entry markets to grant such initial authorizations for a period of one year, and we followed that practice here. Our dismissal is without prejudice to Continental filing for renewal of the authority at the appropriate time.

NEW



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

NOTICE OF ACTION TAKEN

June 25, 1997

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 **5/20/97** in Docket **OST-96-1672** for:

XX Allocation of additional 4.5 weekly combination frequencies for:

U.S.-Russian Federation services to increase Delta's overall total combination frequencies to 23.5 weekly frequencies. With the additional allocation, Delta stated that it would use the frequencies in the following manner: 7 weekly frequencies in the New York (JFK)-Moscow market using its own aircraft and the remaining 16.5 weekly frequencies in code-share arrangements with Austrian, Swissair, or Sabena. Those frequencies would be operated by Delta's code-share partners as follows: 3.5 weekly frequencies in the Vienna-Moscow market and 2 weekly frequencies in the Vienna-St. Petersburg market operated by Austrian; 5.5 weekly frequencies in the Zurich-Moscow market and 2 weekly frequencies in the Zurich-St. Petersburg market operated by Swissair; and 3.5 weekly frequencies in the Brussels-Moscow market operated by Sabena. Delta stated that it intends to implement the code-share services as soon as possible on a year-round basis, but requested a waiver of the Department's standard 90-day dormancy provision with respect to its code-share services to the extent that such operations are not approved by the Russian government, consistent with the relief granted United in Order 96-10-1.

Continental Air Lines, Inc. filed an answer stating that it did not object to Delta's application so long as Continental's request for seven frequencies to operate its own Newark-Moscow service was also granted.

Applicant rep.: **Robert E. Cohn 202-663-8060** DOT analyst: **Linda Senese, 202-366-2367**

DISPOSITION

XX Granted (subject to conditions, see below)

The above action was effective when taken: **June 25, 1997, through June 25, 1998**

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)

XX Authority granted is consistent with the air transport agreement between the United States and the Russian Federation. The Annexes to the Agreement expired May 31, 1997. The Annexes continue to be observed on the basis of comity and reciprocity.

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

XX Holder's certificate of public convenience and necessity

XX Standard exemption conditions (attached)

Special Remarks: By Notice served June 12, 1997, the Department informed all U.S. certificated air carriers that grant of this application and Continental's application (Docket OST-97-2493) would use all of the frequencies currently available for U.S.-Russia Federation combination services and invited all U.S. carriers interested in serving the market to apply for the available frequencies. The Notice stated that should no other applications be filed by June 19, 1997, we intended to act affirmatively on the Delta and Continental applications. No additional applications were received. By Notice issued contemporaneously, we granted Continental's application.

Conditions: Consistent with Department practice, the 4.5 frequencies allocated here are subject to the condition that they will expire automatically and the frequencies will revert back to the Department for reallocation if they are not used for a period of 90 days. The 90 day-dormancy period will begin on the date of issuance of this notice. However, should foreign government approval for these services be withheld, Delta should notify the Department immediately, and in such circumstances, we would entertain a request for a waiver.

To the extent Delta plans to provide the services through code-share arrangements, those services are also conditioned on the following: the code-sharing operations authorized herein 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 foreign air transportation be sold in the name of the carrier holding out such service in the computer reservation systems and elsewhere, that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept all obligations established in the contract of carriage with the passenger, and that the operator shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flights that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

NEW



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

July 7, 1997

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 6/12/97 in Docket OST-97-2614 for:

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

Scheduled foreign air transportation of persons, property, and mail between Atlanta, Georgia, and Caracas, Venezuela.

Applicant rep.: Robert E. Cohn, 202-663-8060 DOT analyst: Sylvia Moore, 202-366-6519

DISPOSITION

XX *Granted*

The above action was effective when taken: July 1, 1997, through July 1, 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 aviation agreement between the United States and Venezuela.**

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)**

NEW



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

NOTICE OF ACTION TAKEN

July 7, 1997

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 6/11/97 in Docket OST-97-2609 for:

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

Scheduled foreign air transportation of persons, property, and mail between Minneapolis/St. Paul, Minnesota, and Puerto Plata, Dominican Republic.

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

DISPOSITION

XX *Granted*

The above action was effective when taken: July 1, 1997, through July 1, 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 aviation agreement between the United States and the Dominican Republic.

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)

NEW



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

NOTICE OF ACTION TAKEN

June 26, 1997

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 SCANDINAVIAN AIRLINES SYSTEM, filed 2/20/96 in Docket OST-96-1088 for:

XX Renew for two years exemption under 49 U.S.C. 40109 to provide the following service under 14 CFR Part 222 of the Department's Regulations:

Intermodal cargo services between any U.S. point as authorized by its foreign air carrier permit (See Order 96-6-45) and any other U.S. point.

or, alternatively

XX Statement of Authorization under 14 CFR 222 of the Department's Regulations to provide the above service on an indefinite basis.

Applicant rep: Michael F. Goldman (202) 944-3305 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX *Granted Statement of Authorization (subject to condition, see below)*

XX *Dismissed exemption*

The above action was effective when taken: June 26, 1997

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 aviation agreements between the United States and Denmark, Norway and Sweden.

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

XX **Holder's foreign air carrier permit**
(See Reverse Side)

Special Condition: This authority is subject to the requirements of 14 CFR Part 222 of the Department Regulations.

Remarks: Since SAS was initially awarded exemption authority to provide intermodal cargo service, the United States and the Governments of Denmark, Norway, and Sweden have entered into open-skies bilateral aviation agreements. These agreements specifically provide for intermodal cargo services. Given these bilateral provisions, SAS is now entitled to the intermodal authorization provided for under Part 222, and the previous exemption authority sought is no longer necessary. In these circumstances, we granted SAS's request for a Statement of Authorization to conduct intermodal operations and dismissed, as moot, its application for renewal of exemption authority for these same operations.

NEW



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

NOTICE OF ACTION TAKEN

July 1, 1997

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 **United Air Lines, Inc.**, filed **4/16/97** in Docket **OST-97-2358 and Undocketed** for:

XX Exemption for two years 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 and Campo Grande, Curitiba, Fortaleza, Florianopolis, Iguacu, São Luiz, João Passoa, Natal, Maceió and Cuiaba, Brazil. United requests that it be issued an exemption authorizing it to serve these additional code-share points as coterminals with the Brazilian points it is authorized to serve pursuant to its exemption issued by Order 96-7-43. United intends to operate this service pursuant to a code-share arrangement with VARIG, S.A. (Viacao Aerea Rio-Grandense) on flights operated by VARIG, commencing October 26, 1997.

XX Statement of Authorization under 14 CFR Part 207 for two years to:

Display VARIG's designator code on flights operated by United in the following markets:

**Gateway to gateway: New York (JFK)-Sao Paulo; Miami-Sao Paulo/Rio de Janeiro;
Chicago-Sao Paulo**

**Connecting services: Miami to/from: Orlando/Denver/Chicago/Washington DC
(DCA/IAD)/Newark/Los Angeles/San Francisco/Atlanta/New York (LGA); Los Angeles
to/from: Honolulu/Las Vegas/Maui/Portland OR/Phoenix/San Diego/Seattle/San
Francisco/Tucson; Chicago to/from: Detroit/Houston/San Juan/Boston**

**and other points on both carriers' authorized routes, as mutually agreed for the carriage of
VARIG's Brazil-U.S. traffic.**

The Joint Applicants state that neither VARIG for code-share services in the United States nor United for code-share services in Brazil will carry local traffic between domestic points.

American filed an answer stating that it did not object to the above application as long as its own application for U.S.-Brazil code-sharing operations with TAM was also granted.

Applicant rep.: **Joel Stephen Burton 202-637-9130** DOT analyst: **Linda Senese, 202-366-2367**

(See Reverse Side)

DISPOSITION

XX *Granted in Part and subject to conditions. (See below)*

XX *Deferred in Part as follows: Exemption authority to serve Campo Grande, São Luiz, João Passoa, and Maceió. Statement of Authorization to serve Honolulu, Maui, Portland OR, Phoenix, and Tucson on a code-share basis with VARIG.*

XX *Balance Dismissed.*

The above action was effective when taken: July 1, 1997, through July 1, 1998

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 aviation agreement between the United States and Brazil.**

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)**

Special Remarks: The authority granted is coextensive with the duration of the statement of authorization and exemption granted VARIG on July 1, 1997.

Grant/Deferral: Under an October 1996 Memorandum of Consultations between the United States and Brazil, U.S. carriers may conduct code-share-only operations to ten Brazilian points in addition to those already named in the U.S.-Brazil aviation agreement (i.e., Manaus, Sao Paulo, Rio de Janeiro, Belem, Belo Horizonte, Brasilia, Porto Alegre, Recife and Salvador). The Brazilian code-share-only points are to be selected by the United States. Similarly, Brazilian carriers may conduct code-share operations to ten U.S. points in addition to those already named in the agreement (i.e., New York, Atlanta, Miami, Orlando, Detroit, Washington/Baltimore, Houston, Chicago, Los Angeles, San Francisco, and San Juan). The U.S. code-share-only points are to be selected by Brazil. In addition to the United/Varig code-share application, American Airlines and TAM-Transportes Aereos Meridionais, S.A. have proposed code-share operations in the U.S.-Brazil market. With respect to code-share operations involving the 10 additional U.S. and 10 additional Brazilian code-share-only points provided for under the October 1996 MOC, the combined code-share requests of United/VARIG and American/TAM exceed the number of U.S. and Brazilian code-share-only points available.

Therefore, we decided to grant both of the joint applications to the extent that they involved the same new U.S. and Brazilian code-share-only points, i.e., Curitiba, Fortaleza, Florianopolis, Iguacu, Natal and Cuiaba for the Brazilian code-share-only points; and Denver, Las Vegas, Seattle, San Diego, and Boston, for the U.S. code-share-only points. (We have addressed the American/TAM application in a separate notice, issued concurrently.) The Statement of Authorization to United to put VARIG's code on its flights to the five U.S. code-share cities is subject to the condition that such authority not be exercised

(See Next Page)

until the Government of Brazil notifies the United States of its selection of these cities as provided for under the MOC. We deferred action on the balance of each carrier's request to the extent it involved service to other Brazilian and U.S. code-share only points. We intend to seek through diplomatic channels to expand the number of code-share only points that may be served, and thereby to avoid the need for competitive selection procedures. However, should it prove necessary, we will proceed to consider what procedures to adopt to select the four remaining additional Brazilian points for code-share-only service.

Dismissal: We dismissed, without prejudice, each carrier's application (United and VARIG) to the extent it requested broad authority to code-share between "other points on both carriers' authorized routes, as mutually agreed," and on future city pairs not specifically identified, and to the extent it requested authority between any U.S. point and any Brazilian point listed in their joint application without specifically indicating how such code-share services would be conducted. It is the Department's policy to grant code-sharing authority only for the services actually proposed by the carriers (see, e.g., United/Lufthansa code share, Order 94-4-43 and Delta/Aeromexico code share, Order 97-1-15). The carriers are free to seek authority for additional markets as their plans develop. We also dismissed that portion of United's application to the extent it requested authority for a two-year period. It is our standard practice to grant such initial authorizations for a period of one year, and we followed that policy here. Our dismissal is without prejudice to United's filing for renewal of the authority at the appropriate time.

Conditions: The code-sharing operations authorized herein 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 foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere, and 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, and that the operator 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.

The route integration authority requested (coterminalization for code-share services) 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 our 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 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 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.

**NEW
CORRECTED NOTICE***



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

June 26, 1997

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.

*In the Matter of **U.S.-Russia Overflight Rights**, Docket **OST-97-2610 (formerly Docket 50326)**:*

Annex 4 of the U.S. Russia Air Transport Agreement provides that U.S. carriers collectively may overfly and stop for nontraffic 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. In response to a Department Notice dated May 4, 1995, four U.S. carriers--Delta Air Lines, Inc., Northwest Airlines, Inc., Tower Air, Inc., and United Air Lines, Inc.--filed applications to use these frequencies. However, a prohibition on flights operating over Afghanistan by the Federal Aviation Administration (FAA) made the overflight rights unusable by the applicants and, accordingly, we did not proceed to allocate the flights. The FAA recently amended its prohibition to permit overflights over one ATS routing--specifically, over Afghanistan's Wakhan Corridor (See SFAR 67, 62 FR 26890, May 15, 1997).

In response to the FAA action, United filed a motion for immediate action on its application for allocation of 14 weekly frequencies (7 in each direction) for its daily services between the United States and India via London, and Northwest updated its application to seek a total of 8 weekly frequencies (4 in each direction), 6 for services between the U.S. and Delhi and 2 for occasional services between the U.S. and Mumbai. In addition, Polar Air Cargo, which had been granted a pendente lite allocation of 1 eastbound frequency on November 21, 1996, for its U.S.-Pakistan operations, sought approval to operate its frequency for U.S.-India services, and without the pendente lite condition.

Neither Delta nor Tower Air responded to United's motion or the subsequent related submissions (though both carriers were served), or expressed any interest in pursuing their previously filed applications. (Delta had sought 14 frequencies and Tower had sought 4 frequencies).

*Applicant reps.: **Megan Rae Poldy (NW), (202) 842-3193** DOT analyst: **Gerald Caolo, 202-366-2406**
Robert Cohn (DL), (202) 663-8060
Joel Burton (UA), (202) 637-9130
Kevin Montgomery (Polar), (202) 785-1995
Stephen Gelband (Tower), (202)-337-6200*

*Notice corrected to reflect assignment of a new docket number in this case in conjunction with implementation of the Department's Docket imaging system.

(See Reverse Side)

DISPOSITION

XX Granted Requests of United, Northwest and Polar (Subject to Conditions, See Below)

XX Dismissed Requests of Delta and Tower

*The above actions were effective when taken: **June 16, 1997.** The allocations granted will remain in effect through **June 16, 1998***

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. The Annexes to the Agreement expired May 31, 1997. The Annexes continue to be observed on the basis of comity and reciprocity.

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

XX Holders' certificates of public convenience and necessity

Remarks: 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. The dormancy period will begin immediately with respect to the allocations to Polar and United as these carriers either are already using the overflights (in the case of Polar) or plan to use them immediately (in the case of United). The 90-day dormancy period for Northwest's allocation of 6 weekly frequencies will begin October 1, 1997, Northwest's proposed start-up date for its U.S.-Delhi service. We decided not to impose a dormancy condition on the two frequencies that Northwest stated it would operate on an occasional basis only. Our allocation of these frequencies, however, is subject to the condition that should another carrier seek to use the overflight rights on a more regular basis, we would withdraw the allocation of these two frequencies from Northwest, thereby ensuring maximum use the available rights.

As a result of our decisions here, 23 of the 28 available overflight frequencies have been allocated and 5 remain available for future allocation.

United's request for immediate action on its application was submitted in the form of a motion. In addition, various pleadings in response to United's request were accompanied by motions to file out of time, or to file otherwise unauthorized documents. We granted all motions.

Finally, given that neither Delta nor Tower sought to pursue their applications, we dismissed them without prejudice to the carriers refile for allocation of overflight frequencies at a later date.