



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

Issued by the Department of Transportation
on the 10th day of September, 1997

Application of

DELTA AIR LINES, INC.

for allocation of 1.5 weekly U.S.-Russia Combination
Frequencies

Docket OST-97-2790

ORDER

Summary

By this order we allocate Delta Air Lines, Inc. (Delta) an additional 1.5 weekly U.S.-Russia combination frequencies, as conditioned in this order.

Background

Under the Air Transport Agreement between the United States and the Russian Federation (Agreement), operations by designated U.S. carriers are limited to a total of 54 round-trip frequencies per week for combination services.¹

The Department has allocated U.S.-Russia combination service weekly frequencies as follows: Alaska Airlines, 3 weekly frequencies; Continental Airlines, 7 weekly frequencies; Delta Air Lines, 23.5 weekly frequencies; Northwest Airlines, 8.5 weekly frequencies; and United Air Lines, 7 weekly frequencies.² (See Orders 96-10-1 and 97-7-33). In addition, the Department has reserved 5 weekly frequencies for Baltia Air Lines to conduct U.S.-Russia services should it commence its proposed U.S.-Russia services authorized by Order 96-2-51. (See Order 96-10-1). In that order the Department found Baltia fit to provide U.S.-Russia services. However, its

¹ Under the terms of the Agreement, services operated exclusively pursuant to cooperative marketing arrangements, including code-share arrangements, do not count against the designation limitations. However, cooperative service arrangements between airlines of either Party and airlines of a third country count for one-half of one frequency for purposes of the frequency limitations. The Annexes to the Agreement expired May 31, 1997. The Annexes continue to be observed on the basis of comity and reciprocity.

²Order 96-10-1 also allocated 7 weekly frequencies to Trans World Airlines, which subsequently relinquished its frequencies for reallocation.

authority does not become effective until it completes additional evidentiary requirements established by the Department. Baltia has recently filed for an extension of time to make the required evidentiary submissions (Docket OST-97-2763).

Application

On August 7, 1997, Delta filed an application for allocation of an additional 1.5 weekly frequencies to expand its services to Russia through codesharing with Swissair in the Moscow-Zurich market. Delta states that it would implement these additional code-share services immediately and would operate the services on a year-round basis. In its answer in Docket OST-97-2763, Delta states that “it is strongly opposed to the continued indefinite reservation of limited and valuable U.S.-Russia combination frequencies by the Department for Baltia.” Delta states that it would accept a conditional award of the requested frequencies, and would relinquish the frequencies to Baltia in the event that Baltia is actually able to implement its proposed U.S.-Russia services within the time frame set forth in its exemption request, *i.e.*, by February 7, 1998. Delta argues that “its proposal will maintain the availability of frequencies to Baltia in the event that Baltia is able to bring its stated plans to fruition, but will prevent the continued waste of these valuable bilateral rights.”³

Responsive Pleadings⁴

Baltia opposes Delta’s request, even subject to the condition that the frequencies would be returned to Baltia if Baltia commences Russia service, arguing that the allocation will jeopardize Baltia’s ability to raise the capital necessary to commence service. It further argues that its service is superior to Delta’s since Baltia will operate nonstop, whereas Delta proposes marketing a 14-hour circuitous Swissair connection to Moscow without increasing U.S.-Russia lift. Baltia maintains that it has submitted documentation for the Department to extend the period it has to make its authority effective, and assuming favorable action by the Department, Baltia will be in a position to commence service within six months.⁵

Decision

We have decided to allocate to Delta an additional 1.5 weekly U.S.-Russia frequencies, subject to the condition that the frequencies would revert to the Department for Baltia’s use should Baltia inaugurate service within six months as proposed in its application in Docket OST-97-2763 and demonstrate firm plans to use these 1.5 frequencies. The frequencies will also be subject to our standard dormancy conditions.

We find that approval of Delta’s request is consistent with the public interest. The limited U.S.-Russia combination frequencies represent valuable operating rights obtained in exchange for

³Delta’s answer to Baltia’s exemption application in Docket OST-97-2763, at. 2-3.

⁴ Baltia did not file an answer in Docket OST-97-2790, but did file in response to Delta’s comments in its own case (Docket OST-97-2763). We will consider its response as an answer to Delta’s allocation application.

⁵ Baltia Reply to Delta Air Lines’ Answer, Docket OST-97-2763, dated August 14, 1997, at 2.

valuable route rights for Russian carriers. It is not our policy to permit such rights to remain unused indefinitely, particularly when other carriers have firm plans to use them.⁶ In this case, Delta has firm plans to use the frequencies. Although the Department had stated that it would reserve five weekly frequencies for Baltia's proposed U.S.-Russia services, we did so expecting that Baltia would institute service by February 1997. We subsequently granted Baltia an extension of time through August 7, 1997, to institute service. Baltia has not yet commenced operations and has sought further Department approval for additional time to effectuate its U.S.-Russia authority and to institute its proposed Russia service.⁷ Given these circumstances, and Delta's firm plans to make immediate use of these valuable rights, we believe that it is in the public interest to grant Delta's request, ensuring that these valuable rights are not wasted.⁸

That said, we recognize that Baltia is in the process of trying to complete the financial and operational steps necessary to initiate service. Therefore, we will condition our allocation of these frequencies to Delta so that should Baltia commence operations by February 7, 1998, and should it demonstrate firm plans to use the frequencies allocated to Delta, these 1.5 frequencies would revert to the Department for allocation to Baltia.⁹ In this regard, we will require Baltia to notify the Department and Delta no later than 30 days before the frequencies are necessary for Baltia's service.

ACCORDINGLY,

1. We allocate to Delta Air Lines, Inc., 1.5 additional U.S.-Russia combination frequencies;¹⁰
2. The allocation granted in ordering paragraph 1, above, is subject to the condition that should Baltia Air Lines commence U.S.-Russia services by February 7, 1998, and demonstrate firm plans to use the 1.5 weekly frequencies, the frequencies will revert to the Department for allocation to Baltia;
3. Subject to ordering paragraph 2, above, the allocation granted Delta by this order is effective immediately for a period of one year;
4. Subject to ordering paragraph 2, above, the allocation of frequencies in ordering paragraph 1, above, is subject to the condition that it will expire and the frequencies will automatically revert to the Department if they are not used for any period of 90 days;

⁶ See *In the Matter of U.S.-Germany Third Country Code-share Designations and Frequency Allocations*, Docket 49674, Order 94-9-2.

⁷ By separate order issued contemporaneously, we are granting Baltia's request in Docket OST-97-2763 for a six-month extension (through February 7, 1998) to effectuate its U.S.-Russia certificate authority and institute service under the certificate.

⁸ While Baltia has criticized the nature of Delta's proposed service, we find that criticism of no decisional weight here given that Delta would in fact be using these valuable bilateral rights whereas Baltia has not yet used them and indeed has no immediate plans to do so.

⁹ See Orders 92-5-41 and 96-10-16.

¹⁰ With this additional allocation Delta has been allocated a total of 25 weekly U.S.-Russia combination frequencies.

5. We require Baltia Air Lines, Inc., to notify the Department in this docket and Delta Air Lines, Inc., no later than 30 days before it will require use of the 1.5 weekly frequencies for its U.S.-Russia services;¹¹ and

6. We will serve this order upon Delta Air Lines, Inc., Baltia Air Lines, Inc., the Ambassador of the Russian Federation in Washington, D.C., the U.S. State Department, and the Federal Aviation Administration.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

¹¹ Baltia's notification should be filed in Docket OST-97-2790 and should be in the form of a letter addressed to the Director, Office of International Aviation, X-40, Room 6412, 400 7th Street, S.W., Washington, D.C. 20590. It should specifically identify when the frequencies will be implemented, and confirm that Baltia has the aircraft to operate the frequencies at issue, and has met any other "fitness" requirements imposed by the Department to institute such service.