



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

Order 97-12-33

Served Dec.31, 1997

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Issued by the Department of Transportation
on the 24th day of December, 1997

Request of

TOWER AIR, INC.

to delay its start-up date (New York-Kiev,
Ukraine)

Docket OST-97-2656

Application of

TRANS WORLD AIRLINES, INC.

for an exemption pursuant to 49 U.S.C. (New
York-Kiev, Ukraine)

Docket OST-97-2986

Joint Application of

TRANS WORLD AIRLINES, INC.

and

**UKRAINE INTERNATIONAL
AIRLINES**

for statements of authorization under 14 CFR
Parts 207 and 212 (reciprocal code-sharing
services)

Undocketed

ORDER

SUMMARY

By this order we grant the request of Tower Air, Inc., to delay its start-up date to serve the New York, New York-Kiev, Ukraine, market until April 15, 1998. We also dismiss the requests of Trans World Airlines, Inc., and Ukraine International Airlines to serve this market under a code-share arrangement.

BACKGROUND

On August 7, 1997, we orally granted Tower Air exemption authority to provide scheduled combination service between New York and Kiev, and allocated it three weekly frequencies to operate this service. ¹ The frequency allocation is subject to the condition that it will expire automatically and will revert back to the Department for reallocation if it is not used for a period of 90 days. The 90-day dormancy period began October 1, 1997, Tower's proposed start-up date. Tower has not inaugurated service, and thus, it will forfeit its U.S.-Ukraine frequencies if it does not begin service by December 30, 1997, unless the Department grants a request to extend the start-up date.

REQUEST FOR EXTENSION OF START-UP DATE

On October 20, 1997, Tower requested that the dormancy deadline be waived to permit it to start its Ukraine service on April 15, 1998, rather than October 1, as originally proposed. Tower states that it had to reschedule its inauguration date as a consequence of technical and marketing delays.

Trans World Airlines filed an objection to Tower's request since TWA also seeks to serve the U.S.-Ukraine market under a code-share arrangement with Ukraine International. ² TWA states that Tower proposes to use B-747 aircraft that are much too large for the thin New York-Kiev route, and moreover, that Tower may not have equipment available to start service in Spring 1998, since it recently leased out a substantial portion of its fleet. TWA states that the Department has no assurance that Tower will actually inaugurate service on April 15, 1998.

DECISION

We have decided to grant Tower's request to postpone the inauguration of its New York-Kiev service until April 15, 1998.

We find that approval of Tower's request is in the public interest. Under the U.S.-Ukraine Protocol, the United States can designate four carriers to serve the U.S.-Ukraine market. Such operations may be operated by U.S. carriers on their own with their own aircraft or under code-share relationships with Ukraine or third-country carriers. The Department has designated, on the one hand, three U.S. carriers to serve Ukraine under code-share arrangements with third-country carriers and, on the other hand, Tower, the only carrier that has proposed direct service in the U.S.-Ukraine market with its own aircraft. Our approval of Tower's services using the fourth designation authorized the first nonstop U.S.-carrier service in the market operated by a U.S.

¹ We subsequently confirmed this action by Order 97-9-20.

² TWA has filed an application for exemption authority to provide service between New York and Kiev/Donetsk, Ukraine, via Paris, under a code-share arrangement with Ukraine International Airlines. TWA and Ukraine also filed a joint application for a statement of authorization to offer the above code-share service. Tower and United Air Lines filed answers to the applications. TWA and Ukraine filed a joint reply. These applications are pending. See Docket OST-97-2986 and Statement of Authorization filed October 9, 1997. TWA requires a designation to Ukraine to provide this service. At the moment, no such designations are available. TWA has requested that Tower's authority be permitted to terminate and Tower's freed-up designation be awarded to TWA.

carrier with its own equipment. We believed then and continue to believe that such service will provide the public an important service alternative to the code-share services and the Ukraine carrier services in the market. We also recognize that the inauguration of service in a long-haul, developmental market, such as the U.S.-Ukraine market, can require additional planning and operational arrangements. Given these circumstances, and the seasonal nature of the market, we have concluded that Tower's requested extension is warranted.

That said, it is not our policy to permit valuable route rights to go unused, particularly when other carriers are interested in using the route opportunity.³ Consequently, we will require Tower to report to the Department on a monthly basis on its progress toward finalizing its plans to commence service in April 1998. Such reports shall include the status of (a) the availability of aircraft that Tower has in its fleet to operate its proposed Ukraine service; (b) its ground-handling arrangements in the Ukraine; and (c) its promotional plans including samples of promotional material, and OAG advertisements. These reports will begin on January 15, 1998. They should be addressed to the Director, Office of International Aviation, filed in Docket OST-97-2656, and served on all parties to the Docket and TWA. These reports will enable the Department to monitor Tower's progress toward implementing its services. Should it appear that Tower will not be in a position to operate its proposed services by April 1998, and other carriers are interested in using these route rights, we will consider whether it is in the public interest to extend Tower's authority to serve the market.

Finally, we have decided to dismiss without prejudice TWA's pending applications to serve the U.S.-Ukraine market under a code share with Ukraine International. Given our decision here, no designation remains available for TWA's proposed service. Furthermore, while we are currently in negotiations with France toward a new more liberal agreement, at this time we have no aviation agreement with France that provides for TWA's proposed operations. Should we reach an agreement that would encompass TWA's proposed operations and should the fourth designation become available, TWA would be free to refile its applications to serve the market.

ACCORDINGLY,

1. We grant the request of Tower Air, Inc., to delay inauguration of its service between New York, New York and Kiev, Ukraine until April 15, 1998;⁴
2. We require Tower Air Lines, Inc., to file a written report addressed to the Director, Office of International Aviation, as described in the text of this order, regarding its progress toward implementing its U.S.-Ukraine service;
3. We dismiss without prejudice the application of Trans World Airlines, Inc., filed in Docket OST 97-2986 for exemption authority to operate U.S.-Ukraine code-share services;

³ See Order 96-9-26 at 5 and 6, and Order 92-9-43 at 4 and 5.

⁴ The 90-day dormancy period for the three weekly frequencies allocated Tower Air will begin April 15, 1998, Tower's proposed start-up date for the service.

4. We dismiss without prejudice the joint application of Trans World Airlines, Inc. and Ukraine International Airlines for the necessary regulatory authority to operate U.S.-Ukraine code-share services; and

5. We will serve this order on Tower Air, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc., the Ambassador of Ukraine in Washington, D.C.; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (Air Carrier Branch, AFS-200).

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions with ten (10) days after the date of service of this order. The filing of a petition for review of this order shall not stay the effectiveness of this order.

By:

PAUL L. GRETCH
Director
Office of International Affairs

(SEAL)

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

