



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

Issued by the Department of Transportation on April 10, 1998

NOTICE OF ACTION TAKEN -- DOCKET OST-98-3720

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 Tower Air, Inc., filed 4/6/98 for:

XX Emergency Exemption under 49 U.S.C. 40109 to:

Integrate its authorities to serve the New York-Paris, New York-Tel Aviv, and New York-Cairo markets so that it may operate services beyond Paris to Tel Aviv and Cairo. Tower also seeks exemption authority to serve Paris, Tel Aviv, and Cairo from Miami, San Juan, Los Angeles, San Francisco, and Las Vegas and to integrate these authorities to operate beyond Paris to Tel Aviv and Cairo. On April 9, 1998, Tower filed a letter to clarify that its request to serve Paris from other U.S. gateways was limited to underlying authority only, and that any operations conducted by Tower under that authority would be operated with capacity already authorized to Tower in the U.S.-France market or any subsequent capacity allocations granted the carrier under the new U.S.-France agreement.

Tower seeks expedited action on its application so that it may begin advertising and promoting the new service as soon as possible.

Applicant rep: Stephen L. Gelband (202) 337-6200 DOT Analyst: Terri Bingham (202) 366-2390

DISPOSITION

XX **Granted request as clarified** (subject to conditions, see below)

The above action was effective when taken: April 10, 1998 through April 10, 2000

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

XX **The authority granted is consistent with the April 8, 1998 Memorandum of Consultations between the United States and France,¹ and the aviation agreements between the United States and Israel and between the United States and Egypt.**

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)**

Conditions: 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 the award of the route integration authority requested should be construed as conferring upon Tower rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Tower notifies us of its intent to serve such a market and unless and until the Department has completed any necessary selection procedures to

(See Reverse Side)

¹ On April 8, 1998, the United States and France signed a Memorandum of Consultations (MOC) and initialed the text of a framework for a new Air Transport Agreement (Agreement). The MOC also provided that each Party would permit operations consistent with the Agreement on the basis of comity and reciprocity, pending finalization of the Agreement.

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 Tower's authority by virtue of the route integration exemption granted here, but that are not then being used by Tower, the holding of such authority by route integration will not be considered as providing any preference for Tower in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

The authority to serve beyond Paris to Tel Aviv and Cairo is subject to the phase-in and frequency limitations set forth in the April 1998 U.S.-France MOC and attached Agreement. Furthermore, the frequencies operated beyond Paris are subject to our standard dormancy condition which provides that any frequencies not operated for a period of 90 days automatically expire and revert to the Department for reallocation. The 90-day dormancy period will begin upon Tower's inauguration of beyond Paris services to each beyond point.

The authority granted for the New York-Paris-Tel Aviv/Cairo markets is subject to the condition that such operations are conducted within the capacity Tower may operate for its New York-Paris services. Similarly, the authority to serve Paris from gateways other than New York is subject to the condition that any such services are conducted within the capacity authorized Tower for U.S.-Paris combination air services.

Remarks: We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served with the application.²

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; (2) grant of the exemption was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. 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 document is available on the World Wide Web at:
<http://dms.dot.gov/general/orders/aviation.html>*

² In this regard, at the request of the Department, Tower notified a number of additional carriers regarding its April 6 application and reported that none objected to grant of the authority requested.

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 shall be effective only during the period when the holder is in compliance with the conditions imposed above.