



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

Issued by the Department of Transportation  
on the 8th day of May, 1998

**SERVED: MAY 13, 1998**

Applications of

**AMERICAN AIRLINES, INC.  
TOWER AIR, INC.  
UNITED AIR LINES, INC.  
US AIRWAYS, INC.**

**Dockets OST-98-3756  
OST-98-3732  
OST-98-3753  
OST-98-3757**

for allocations of frequencies (U.S.-France)

**ORDER ON FREQUENCY ALLOCATIONS**

**SUMMARY**

By this order, we allocate seven weekly frequencies to United Air Lines, Inc., and four weekly frequencies to Tower Air, Inc., to operate scheduled combination services in the U.S.-France market. These frequency allocations, both of which concern services proposed to begin in 1998, are effective immediately. We also defer action on the applications of US Airways, Inc., and American Airlines, Inc., so that we may consider them in a soon-to-be instituted allocation proceeding regarding 1999 U.S.-France services.

**BACKGROUND**

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) which provides for substantial growth in transatlantic scheduled air services over a five-year period. At the end of five years, U.S. and French air carriers may operate in a fully liberalized market with no limits to the number of flights they may operate between the United States and France. The MOC also noted the intentions of each Party to permit immediately, on the basis of comity and reciprocity, operations consistent with the terms of the Agreement.

With respect to combination services, the Agreement provides that during the period April 1998 through April 2002, the airlines designated for combination services collectively may operate up to 63 additional weekly frequencies in the market. Of these 63 frequencies, a total of 21

frequencies are available immediately. Seven become available in April 1999, 14 in April 2000, seven in April 2001, and 14 in April 2002. <sup>1</sup>

By Notice dated April 10, 1998, we invited carriers wishing to provide services in 1998 to submit applications to use the 21 weekly frequencies that are available immediately. <sup>2</sup>

## **APPLICATIONS**

Four carriers-- United, Tower, US Airways, and American--filed applications for a total of 32 weekly frequencies.

United requests seven weekly frequencies to operate a second daily nonstop service in the Washington, D.C.-Paris market beginning June 10, 1998, using B-777 aircraft. United states that this second daily flight is an integral part of its plans to expand its international hub operations at Washington Dulles this summer, including the addition of a second bank of international flights operating later in the day than existing international services.

Tower requests four weekly frequencies for nonstop service in the New York-Paris market beginning July 1, 1998, using B-747 aircraft. Tower states that it requires these additional frequencies in order to be competitive with the U.S. major carriers who are able to operate to Paris with substantially greater frequencies than Tower and who now also will be able to improve their competitive positions through code-share services in the U.S.-France market, a benefit not available to Tower. Also, the carrier states that it would use the additional frequencies to implement its newly-authorized four-times-a-week beyond-Paris route rights to Tel Aviv, Israel.

US Airways requests seven weekly frequencies for nonstop service in the Philadelphia-Paris market for service beginning on or before March 1, 1999, using B-767 aircraft. US Airways states that it has applied for exemption authority to operate service in the Pittsburgh-Paris market, commencing on October 1, 1998, using the seven weekly frequencies it currently uses for its second daily Philadelphia-Paris service, and that it intends to use the seven weekly frequencies it has requested in this case to reinstitute that second daily Philadelphia-Paris flight.

American requests seven weekly frequencies for new nonstop service in the Los Angeles-Paris market and seven weekly frequencies for a second daily round-trip in the New York-Paris market. The carrier states that it would begin service in both markets on April 1, 1999, and would use B-767 aircraft. American states that because of its plans for new U.S.-Japan services to be inaugurated in May and November 1998, American will not have any uncommitted extended-range aircraft to devote to additional international operations until the second quarter of 1999. In a responsive pleading, as discussed below, American states that it would advance the inauguration of its proposed Los Angeles-Paris service to March 1, 1999.

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<sup>1</sup> References to April of a given year mean that opportunities will be available from the first day of the International Air Transport Association (IATA) summer traffic season, which is normally in the last week of March.

<sup>2</sup> The Notice also dealt with all-cargo services, third-country code-share services, and same-country code-share services. Applications filed for those opportunities will be addressed separately.

## **RESPONSIVE PLEADINGS**

Answers were filed by American, Tower, United, US Airways, Continental Airlines, Inc., Trans World Airlines, Inc., and the Washington Parties. Replies were filed by American, Tower, United, and US Airways.

No objections were filed to United's request for seven additional frequencies for its Washington-Paris service. The Washington Parties support United's application for frequencies, stating that United's proposed second daily nonstop service in the Washington-Paris market will benefit the economies of the U.S. and Washington region and provide travelers and shippers in the market more convenient travel options.<sup>3</sup>

American argues that Tower has not fully used its authority to operate daily service in the U.S.-France market and, thus, Tower's request for four additional weekly frequencies should receive the lowest priority. Tower argues that United and Tower should be granted their frequency requests ahead of American and US Airways, which do not propose to use their requested frequencies until 1999, or eight months after Tower would begin using the route rights. Tower also argues that it has held consumer prices in the U.S.-France market to a very low level because it is able to operate at a much lower cost than American and the other large airlines and, therefore, Tower's service to Paris provides substantial benefits, which will be further enhanced if its application is granted.

Continental, Tower, Trans World and United all object to the applications of US Airways and American, arguing that consideration of those applications should be deferred until the Department considers allocation of frequencies for 1999 services. American and US Airways both argue that their applications are consistent with the Department's notice and should be granted.<sup>4</sup>

In connection with US Airways' proposed startup date, American states that it does not believe that a one-month difference between US Airways' proposed date of March 1, 1999, and American's proposed startup date of April 1, 1999, should be accorded decisional weight, but if the Department finds otherwise, American will commence its Los Angeles-Paris service on March 1, 1999.

## **DECISION**

We have decided to allocate seven weekly frequencies to United and four weekly frequencies to Tower to operate additional scheduled combination services in the U.S.-France market. These frequency allocations will be effective immediately and will be subject to our standard 90-day

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<sup>3</sup> The Washington Parties represent the Metropolitan Washington Airports Authority, the Department of Aviation of the Commonwealth of Virginia, the District of Columbia, and the Washington Airports Task Force.

<sup>4</sup> American states it would not object to deferral of its request for seven weekly New York-Paris frequencies until such time as the Department considers applications for allocation of the seven weekly frequencies that become available April 1999 under the MOC.

dormancy condition.<sup>5</sup> We have also decided to defer action on the applications of US Airways and American for U.S.-France frequencies.

The new U.S.-France agreement provides valuable new opportunities to expand U.S.-carrier services in the U.S.-France market. Given the signing of the MOC in April 1998 and the imminence of the upcoming traffic season, we recognized the importance of ensuring that U.S. carriers would be able to implement their planned 1998 services. To this end, we solicited applications from carriers interested in using the opportunities for services in 1998 and indicated that we would solicit applications for the other opportunities available under the MOC at a later date.<sup>6</sup>

Of the four applications received, two--those of United and Tower--propose services in 1998, while two--those of US Airways and American--propose services in 1999. In light of the fact that our notice, by its terms, called specifically for applications for 1998 services; that United and Tower filed such applications; and that their requests to operate 1998 services are within the 21 frequencies available, we will allocate frequencies to United and Tower for their proposed operations at Washington and New York, respectively. We find that the award of this authority will enhance the service options available to the public and will serve the public interest. Ten frequencies will remain available for future allocation.

We are unpersuaded by American's arguments against an allocation of frequencies to Tower. Tower has served the U.S.-France market for a number of years and was recently granted rights beyond Paris that would benefit from the operation of these additional frequencies.<sup>7</sup> To the extent that American is concerned over Tower's use of the allocated frequencies, the award is subject to our standard dormancy condition. Should Tower not use any of the frequencies, they will revert to the Department for reallocation.

We fully recognize the need for carriers to plan their services, particularly those services proposed for early Spring 1999. In this regard, we intend to issue a notice in the very near future for the allocation of frequencies for such services. As ten frequencies remain available for allocation and an additional seven frequencies will become available effective in April 1999, a total of 17 frequencies will be available for allocation. Since we will be issuing such a notice shortly, thereby affording all carriers an opportunity to present 1999 service proposals, we will defer action on the applications of American and US Airways. Those carriers will be free to update their proposals at the time we solicit applications for 1999 services.

**ACCORDINGLY,**

1. We award new frequencies to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-France market as follows: seven (7) weekly frequencies to United Air Lines, Inc., for service in the Washington, D.C.-Paris market and four (4) weekly frequencies to Tower Air, Inc., for service in the New York-Paris market;

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<sup>5</sup> Consistent with our standard practice, the 90-day dormancy period will begin on the date each carrier proposes to inaugurate service.

<sup>6</sup> April 10, 1998 Notice at 1 and 3.

<sup>7</sup> Notice of Action Taken, dated April 10, 1998.

2. The frequency allocations in ordering paragraph 1, above, are (1) effective immediately and will remain in effect indefinitely, provided that United and Tower continue to hold the necessary underlying authority to operate the services , and (2) subject to the condition that they will expire automatically and the frequencies will revert to the Department for reallocation if they are not used for 90 days, once they become available. The dormancy period will begin June 10, 1998, for the frequency allocation to United Air Lines, Inc., and will begin July 1, 1998, for the frequency allocation to Tower Air, Inc.;

3. We may amend, modify, or revoke the frequency allocations in this order at any time at our discretion without notice or hearing;

4. We defer action on the applications of US Airways, Inc., in Docket OST-98-3753 and American Airlines, Inc., in Docket OST-98-3756 for allocation of U.S.-France frequencies; and

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

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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