



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

## NOTICE OF ACTION TAKEN

NEW

May 8, 1998

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*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 **UNITED AIR LINES, INC.**, filed **4/17/98** in Docket **OST-98-3732**<sup>1</sup>:

**XX** Allocation of U.S.-France third-country code-share opportunities to:

**Conduct scheduled combination air services between points in the United States and France via Germany on a blind-sector basis under a code-share arrangement with Lufthansa German Airlines. United states that initially it would offer code-share services to six points in France (Paris (CDG), Paris (ORY), Nice, Toulouse, Lyon and Marseille<sup>2</sup>) via three points in Germany (Frankfurt, Munich, and Dusseldorf). United states that it would not hold out code-share service between New York and Paris via points in Germany because it lacks the underlying route authority to offer service in that city pair.**

**United further requests that this application serve as the required notice under the blanket statement of authorization granted Lufthansa by Order 98-4-8 of the United/Lufthansa U.S.-Germany-France “via third-country” code-share service.<sup>3</sup>**

American Airlines, Continental Airlines, and Northwest Airlines filed answers to United’s application, and United filed a consolidated reply. Northwest urges immediate approval of United’s application as well as its own third-country code-share application, stating that Northwest and United are the only two applicants for the two available third-country code-share service opportunities. American and Continental do not object to United’s application, but state that its proposal to operate to both Paris airports is contrary to the MOC. Continental further states that the Continental/Air France and Delta/Air France code-share applications which include service to Newark and New York’s JFK Airport are not relevant to the restriction on United’s Paris code-share services as the MOC does not address French carrier code-share service at JFK and Newark, but rather code-share services at LaGuardia and Ronald Reagan Washington National Airport. United, in its reply, states that notwithstanding the specific provisions of the MOC, Air France’s request to serve both Newark and JFK highlights the need for a liberal and uniform approach to the issue, and maintains that if the U.S. is prepared to permit Air France to serve both New York international airports, U.S. carriers should be permitted to code-share to both Paris airports, particularly so long as Orly is used for international operations.

Applicant rep: **Joel Stephen Burton. (202) 637-9130** DOT Analyst: **Linda Senese (202) 366-2367**

### DISPOSITION

**XX** *Granted, subject to conditions (See below)*

(See Reverse Side)

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<sup>1</sup> United’s application also sought authority for allocation of seven U.S.-France combination service frequencies, broad U.S.-France exemption authority and exemption and designation to operate all-cargo service between the United States and France. Those requests are being handled separately. This notice concerns only United’s request for allocation of one of the two available opportunities to serve France under third-country code-share arrangements.

<sup>2</sup> United notes that the extent Air France may seek to code share to more than one airport serving a U.S. city or cities, United should also be permitted to do so in Paris.

<sup>3</sup> By Order 98-4-8, the Department granted United and Lufthansa blanket statements of authorization to engage in code-sharing services between the United States and Germany via third countries and beyond both the United States and Germany. That authorization was subject to certain conditions, one of which requires advance notification to the Department of any proposed services involving limited-entry markets. The blanket authorization also makes clear that such services cannot be provided unless and until the Department has completed any necessary carrier selection procedures for the award of the authority at issue.

The above action was effective when taken: **May 8, 1998**, and will remain in effect, subject to the conditions described below.

**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 Memorandum of Consultations signed April 8, 1998, between the United States and France,<sup>4</sup> and the aviation agreement between the United States and Germany.

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 and U.S.-France exemption authority

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**Conditions:** The authority granted here was made subject to the conditions imposed on Lufthansa's blanket statement of authorization in Order 98-4-8,<sup>5</sup> as well as the following conditions:

- (a) the code-share service operated to Paris must be limited to services operated through Charles de Gaulle Airport; and
- (b) the code-share operations must not involve services in the New York-Paris market.<sup>6</sup>

**Remarks:** We have contemporaneously issued notices approving the applications of Northwest and KLM for third country code-share services and Continental and Air France and Delta and Air France for U.S.-France code-sharing services.

Regarding United's request to serve both Paris airports, under the provisions of the April 1998 MOC, U.S. carrier code-share services to Paris are limited, as United acknowledges, to the airport through which the U.S. carrier operates its own transatlantic services, which in this case is Charles de Gaulle. We accordingly limited United's proposed code-share services with Lufthansa. While we appreciate the issues raised by United, those issues were specifically explored in the recent aviation negotiations. Taking into account the background of the provisions of the MOC on this matter, we determined that in the circumstances presented, it would not be consistent with the public interest to impose a restriction on Air France's code-share services at Newark and JFK. We emphasize, however, that, consistent with the statements of the U.S. delegation reflected in the MOC, we are prepared, in light of the French position on this issue, to limit Air France's code-share services at LaGuardia and Ronald Reagan Washington National Airport.

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

<sup>4</sup> 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.

<sup>5</sup> We note that we have made a limited conforming change to one of the conditions of Order 98-4-8, so as to reflect current standard language. That condition in its entirety, now reads, as amended: "All operations 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 reservations and elsewhere; 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; that the passenger liability of the operating carrier be unaffected; and that the operator shall not permit the code of its U.S. 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."

<sup>6</sup> U.S. carrier services in the New York-Paris market are limited through 2003, and United is not one of the U.S. carriers now designated to serve New York.