



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

Issued by the Department of Transportation
on the 11th day August, 1998

Served: August 11, 1998

In the matter of

U.S.-TOKYO AIR SERVICES

Undocketed

FINAL ORDER

Summary

By this order we have decided to make final our tentative decision in Order 98-7-20 to award 16 Tokyo (Narita) slots to Polar Air Cargo, Inc. for its U.S.-Japan and beyond cargo services, and two Narita slots to United Parcel Service Company (UPS) for its beyond-Japan services. We have decided to modify our tentative decision in order to award the remaining four slots (two year-round and two winter season only) to Federal Express Corporation rather than to Delta Air Lines, Inc. and American Airlines, Inc. for their combination services in the Los Angeles-Tokyo and the San Jose-Tokyo markets, respectively.

Background

On June 26, 1998, the Department was notified by Japanese authorities that 22 additional weekly slots at Tokyo's Narita Airport would be available, beginning with the 1998/99 winter season, for services by U.S. carriers, and requested that the United States notify Japan no later than August 12 regarding which U.S. carrier services would be authorized to use the available slots.¹ By Notice dated July 8, 1998, the Department requested that all carriers authorized to serve Tokyo and interested in award of the available slots file information with respect to their current and proposed operations so that we could meet Japan's request. By Order 98-7-20, we issued a tentative decision, proposing to award 16 slots to Polar and two slots to UPS for their all-cargo services. With the

¹ Two of the 22 slots are available for winter season operations only. A slot is required for each take-off and landing and, thus, two slots would be required for each round-trip operation.

remaining four slots, we proposed to award two each to Delta and American, since both carriers had requested additional slots to upgrade services in certain markets from six weekly flights to daily services. Because of the Japanese Government deadline, we required that objections to our tentative decision be filed July 31 and that answers to objections be filed by 3 p.m. EDT on August 4, 1998.

Responsive Pleadings

Objections to the Department's tentative decision were filed by American Airlines, Continental Airlines and Continental Micronesia, Inc. (jointly), Delta Airlines, Hawaiian Airlines, Inc., Federal Express Corporation, United Parcel Service (UPS), Massport, the City of San Jose, California and the San Jose International Airport, and the State of Hawaii. American,² Continental/Continental Micronesia, Polar, UPS, Federal Express, Massport, and San Jose filed replies.

All of the combination carrier applicants oppose the Department's tentative decision to award the majority of the available slots to all-cargo carriers. Collectively, they raise the following arguments: (1) combination services offer both passenger and shipper benefits and, thus, provide greater overall public benefits; (2) the cargo markets proposed to be served by Polar and UPS are well served by both U.S. and Japanese carriers; (3) over half of the slots would be used for beyond-Japan services and that such awards are contrary to Department precedent to give low priority to service in fifth and sixth freedom third-country markets over the needs of third and fourth freedom U.S. markets; (4) the U.S.-Japan MOU was intended to respond to the unmet needs for additional passenger services; and (5) in light of the Asian economic crisis, the demand for cargo services is declining, reducing any need for slot awards for cargo service.

Continental and Continental Micronesia also object to the awards to American and Delta, as neither would use the additional slots for service in a new market. They also argue that Delta has been able to operate a daily service on an *ad hoc* basis and advertises a daily service in the Los Angeles-Tokyo market, and that American has not chosen to upgrade its service in the past using an *ad hoc* procedure.

Federal Express objects to the Department's tentative decision to the extent that it does not award any of the slots to Federal Express and to statements in the Department's show-cause order that it was not seeking award of any of the available slots. Federal Express maintains that it responded to the Department's July 8 Notice; that its pleading indicated that it had not received four slots needed for its proposed 1998/99 winter season services and, therefore, that it expected to be considered an applicant in this proceeding. It further states that it intends to use those slots to maintain a constant level of year-round service, that it is the only applicant seeking slots in order to maintain an existing level of service, and that absent an award it will be required to reduce its existing services during the winter season.

UPS supports the Department's tentative decision to give a preference to all-cargo services. It objects, however, to the Department's decision to the extent that it did not award UPS sufficient slots to operate all of its proposed beyond-Japan services, rights provided for in the 1998 MOU.

² American attached to its answer a letter signed by the New York congressional delegation objecting to the Department's tentative decision to the extent that it did not award slots to American for its New York-Tokyo services.

UPS argues that, given its historic interest in the market, its proposal should have been given priority over Polar's; its service would offer greater overall benefits since it serves the entire cargo market, whereas Polar does not; and a greater award to UPS would connect every point in the U.S. with every point in Asia, a benefit not available from Polar's proposed U.S.-Narita-Manila service. UPS contends that, at a minimum, it needs to be able to operate five weekly flights for its small package shipments, and that without the necessary slots for this level of service it may not be able to operate at all.

Polar also supports the Department's tentative decision to use the available slots for all-cargo services and the proposed award to Polar. Polar reiterates the importance of Narita access for its U.S.-Japan and beyond services and states that its service will compete directly with the traditional freight operations of Nippon Cargo Airlines and Japan Airlines, and will offer international courier services and air freight forwarders reliable freighter operations in conjunction with their own door-to-door express services that compete with UPS and Federal Express. It also notes that all of the other carriers, except Polar, have received slots for new services, and that carriers with alliances may have access to additional slots, an option not available to Polar.

The three all-cargo carriers collectively object to arguments that passenger services are more important or more economically valuable than all-cargo services and that use of slots for beyond services is an improper use or "waste" of the slots. They argue that there is an abundance of passenger services already, with all-cargo flights accounting for only 22 percent of all of U.S.-Japan services, and that all-cargo flights provide significant and indispensable benefits to a broad array of industries. They also argue that combination services are not a substitute for all-cargo service because they do not provide the same capacity and their flights are timed for passenger needs, not cargo needs. Further, they argue that the use of slots for beyond-services provides valuable public benefits and is fully consistent with the negotiating objectives of the 1998 MOU. In this regard they note that Narita is the primary point for cargo traffic not only between the U.S. and Japan, but also between Japan and Asia, and thus is critical to operation of a competitive all-cargo service. Moreover, they maintain that operation of services beyond Japan via Narita also includes U.S.-Asia traffic in markets which do not economically support direct long-haul large aircraft all-cargo service. They also state that cargo traffic is frequently directional and that cargo carriers need to combine traffic flows, particularly in the direction of weaker demand, to position capacity adequate for shipper requirements in the prime direction, factors affecting the U.S.-Japan, U.S.-Asia, and Japan-Asia markets. Finally, they point out that all-cargo beyond rights were a significant element in the negotiations and those rights should be used to the benefit of U.S. shippers and consumers.

Hawaiian Airlines objects to the Department's show-cause order to the extent that it did not make provision for slots for Hawaiian's proposed Maui-Tokyo service in January 2000 and argues that such failure is arbitrary and capricious. It also states that it would have no objection if slots awarded to Hawaiian were used temporarily by other carriers until January 2000.

Massport and Hawaii object to the Department's decision to award the majority of slots to all-cargo services and, particularly, for services in beyond-Japan markets. They contend that such limited resources should be used to support U.S.-Japan services, and that awards to combination services would provide greater public benefits. Massport specifically notes that Boston has no non-stop

service, while most of the other cities at issue have service from at least one U.S. carrier. For that reason, Massport argues that American's Boston-Tokyo proposal should have been given first priority, and that such service will provide valuable passenger and cargo benefits. Hawaii argues that Honolulu-Tokyo is the largest U.S.-Japan market and that the benefits to Hawaii from additional competitive services outweigh any benefits from additional U.S.-Japan and beyond-Japan cargo services. It urges the Department to reconsider its tentative decision allocating slots to Polar and UPS, and instead to award the 18 slots to Delta and Continental Micronesia for their Honolulu-Tokyo services.

San Jose objects to the Department's decision only to the extent that American's San Jose service was awarded the winter-season only slots. San Jose argues that it receives services from only one carrier, American; that it has previously demonstrated the need for year-round services; and that, unlike most other parties in this case, American's service is San Jose's only link to Tokyo. In these circumstances, San Jose argues that the Department's final decision should award two year-round slots to American and that award of the winter-season-only slots should be to one of the cargo carriers, since they received 18 of the 22 slots, or to Delta, since Los Angeles receives services from a number of U.S. carriers as well as Japan Airlines.

Decision

We have decided to make final our proposed awards in Order 98-7-20 of 16 slots to Polar and 2 slots to UPS. We have decided to revise our proposed decision with respect to the remaining four slots and will award them to Federal Express.

The 1998 U.S.-Japan MOU is a significant step toward a more liberal aviation regime with Japan and provided, for the first time in many years, the ability to expand combination and all-cargo services, including services beyond Japan--all directed toward providing the greatest range of benefits to the traveling and shipping public in this important Asian market. In our show-cause order, we noted that this liberalization had already resulted in valuable public benefits for travelers by the introduction of significant new passenger services, not only between the United States and Tokyo, but also between the United States and other Japanese cities. All of these services have provided passengers new and important access to Japan.

However, we also noted that, while the MOU had provided valuable new cargo rights, most notably the ability for all authorized all-cargo carriers to serve Narita and the ability to serve beyond markets critical to the viability of U.S.-Japan all-cargo operations, the public had not yet realized the benefits from the liberalized cargo regime as it had from the liberalized passenger regime, and that this consideration should be given weight in the context of this case. For these reasons, we tentatively concluded that the 22 slots provided an important opportunity to effectuate the available cargo service rights, and that, in this case, the best way to achieve that objective was to award the slots primarily to all-cargo carriers. We also tentatively concluded that this result would provide greater public benefits than any other presented in this case, including awarding most, if not all of the slots for passenger service.

Having thoroughly reviewed all of the pleadings filed in response to our show-cause order and the now complete record in this proceeding, we now affirm those conclusions.³

We find no merit in the argument that we should award all, or most, of the slots at issue to applicants proposing to use them for passenger service because that is what the 1998 MOU intended. The history of that agreement demonstrates that it was dedicated to enhancing service and competition in the U.S.-Japan/Asia air service markets; that it created opportunities for new and improved passenger **and** all-cargo service for that purpose; and that it does not favor one over the other as a means of achieving its principal objectives, or for any other reason. As noted, we have already taken major steps to offer significant additional passenger service in this market by providing all of the combination carriers participating in this proceeding with additional opportunities. We are now taking steps to enhance the opportunities for all-cargo carriers under the MOU, and thereby benefit shippers in freight markets that are among the largest and most important in the world.

The history of the MOU also shows that the U.S. attached considerable importance to maintaining and improving the rights of U.S. carriers to operate between Japan and third countries. These so-called beyond rights are invaluable because they provide traffic to support the highest levels of service and competition in the U.S.-Japan market, and because they allow U.S. airlines to participate effectively in other world aviation markets, many of which may not be able to sustain service in their own right. It is in this context that our negotiators bargained hard to secure these beyond-Japan rights, and that is why it is in the public interest to allocate slots to carriers proposing to use them in these circumstances.

Our awards to the all-cargo carriers in this case meet that important objective. Polar, for example, proposes to operate over a U.S.-Tokyo-Philippines routing. It convincingly argues that if it could not operate between Tokyo and the Philippines, its overall operations would be uneconomic and U.S. shippers and consignors would lose the benefit of the enhanced cargo rights that the U.S. gained in the 1998 MOU. Viewed from this perspective, we are unpersuaded by arguments that our tentative decision would waste valuable limited-entry route rights because many of the slots awarded for all-cargo service would be used for service in Japan-third country markets.

We similarly find unconvincing other arguments purporting to show that the use of Tokyo slots for passenger services would offer greater public benefits than all-cargo services. In this regard, some contend that there is a greater need for additional passenger service than all-cargo service in the markets involved because of the large number of airlines providing freight service to Japan. However, there are fewer U.S. airlines now providing all-cargo service between the U.S. and Narita than the number of U.S. airlines providing passenger service in this market. Furthermore, the “need for service” argument is based, at least in part, on the erroneous assumption that combination service is a precise substitute for all-cargo freighter service. As UPS correctly points out, all-cargo operations provide a separate product which meets a very large segment of the demand for freight

³ This includes our decision not to make an award to TWA or Hawaiian for their proposed future services. We fully addressed the issues raised in Hawaiian’s objection in our show-cause order. Hawaiian has presented no new arguments that persuade us to change that decision. TWA did not file objections to our tentative decision.

service, a demand that cannot be met by the combination carriers.⁴ This argument is also inconsistent with one of the fundamental premises of the 1998 MOU: that there is an overriding need for both additional all-cargo service and additional passenger service, and that it is in the public interest to create significant new opportunities for both. We are now taking the action needed to respond to the public demand for additional all-cargo service and competition, after having already taken significant action to respond to the public demand for both in the passenger area.

Based on the above, we have decided to make final our awards to Polar and UPS for their all-cargo services. These awards will ensure Polar access to Tokyo (a benefit already enjoyed by UPS) and will enable both UPS and Polar to operate four weekly round-trip flights in beyond-Tokyo markets (Taipei for UPS and Manila for Polar) and, thus, will contribute to both our service and competitive objectives in this proceeding. Similarly, the above approach supports the one change that we have elected to make to our tentative decision, *i.e.*, the award of the four remaining slots to Federal Express.

It is clear from Federal Express' original submission, when read in light of its responses to our show-cause order, that it seeks an award of four slots in order to operate a regular year-round pattern of service. Given our primary objective in this proceeding of maximizing all-cargo services, and Federal Express' clarification on the record, we have decided that the four remaining slots should be awarded to Federal Express. Federal Express has sought the additional slots to maintain its current pattern of summer season services in U.S.-Japan and beyond-Japan markets and made clear that it would have to reduce its service from existing levels in the upcoming winter season absent an award of slots in this case. Given the awards to Polar and UPS, an award to Fed Ex will ensure that all of the interested all-cargo carriers are able to exercise the rights negotiated in the MOU, and will promote all-cargo competition to the benefit of shippers in the U.S.-Japan and U.S.-Asia markets, consistent with our stated goals in this proceeding. Indeed, had we fully appreciated the limited and particularized purpose underlying Federal Express' request, we would, in light of our overall objectives in this case, almost certainly have awarded it slots in our tentative decision. While we recognize, that as a result of our final decision, American and Delta will not have the guaranteed slots to operate their daily San Jose and Los Angeles-Tokyo services, and thus may have to secure the needed slots through alternative means, on balance, we conclude that the public benefits of an award to Federal Express outweigh this consideration and best serve our overall objectives in this case.

We are unpersuaded by UPS' arguments that its service needs should be granted priority over those of Polar or any other applicant in this proceeding. As we noted in our show-cause order, the ability of all U.S. cargo airlines to serve Narita, as well as beyond markets, was a critical objective in negotiating the 1998 MOU. The freight infrastructure is located at Narita and, thus, Narita is a key element in developing competitive services in the U.S.-Japan and U.S.-Asia cargo markets. In this case, Polar is the only cargo carrier without access to Narita and, until the MOU, Polar and UPS did not have any rights beyond Narita.

⁴ August 4, 1998 Answer of UPS at 5.

In this regard, the record shows that Polar needs all of the slots that we tentatively awarded it in order to enter the Narita market and to compete effectively with airlines now serving Narita. UPS is one of those airlines. Moreover, UPS' position has recently been improved by new rights created under the MOU, and by successfully obtaining enough slots to operate a substantial portion of its proposed beyond services. In contrast, Polar's only access to Narita slots at this time is through this proceeding. Consequently, in the absence of an award in this case, shippers would be denied the benefit of new entry and enhanced competition contemplated by the MOU. Our tentative awards to Polar and UPS ensured that both carriers had the ability to serve Narita and beyond markets to meet the service and competitive goals of the MOU. UPS has not presented any arguments that persuade us to strike this balance differently.

The MOU also sought to provide all U.S. airlines with the opportunity to expand their services and, in the negotiations toward that MOU, it was never contemplated that any carrier would be required to reduce service below its existing operations because of the slot situation at Narita. This consideration provides Federal Express with a significant advantage over UPS in terms of the slot awards at issue here. While we do not question that additional services by UPS would benefit shippers, we are not persuaded that these benefits outweigh all other valid considerations in this case.

As a final matter, we appreciate and are impressed by the participation of all of the civic parties in this case, as well as in other proceedings dealing with U.S.-Japan route opportunities under the 1998 MOU. We are also sensitive to their desire for new and expanded service to Japan and we intend to respond to these interests by continuing to work with interested communities in achieving their aviation objectives. In this regard, we are hopeful that the new facilities at Osaka and the forthcoming expansion of facilities at Narita, as well as the cooperative service arrangements among U.S. airlines and between U.S. and foreign airlines, collectively will continue to promote further realization of the passenger and cargo service needs of communities for greater access to the Asian market.

ACCORDINGLY,

1. We make final our tentative decision in Order 98-7-20, as modified by this order, and award the 22 1998/99 winter-season slots for services at Tokyo's Narita Airport as follows:

Polar Air Cargo:	16 slots
United Parcel Service:	2 slots
Federal Express Corp.:	4 slots (which includes the two winter-season only slots);

2. To the extent not granted, we deny all requests in the captioned matter;

3. We will not entertain petitions for reconsideration of this order;⁵ and

⁵ All parties have had a full opportunity to respond to our tentative decision, as well as to all objections to that tentative decision. Furthermore, the deadline set by the Japanese government for notification of the slot awards, as noted in our show-cause order, does not permit time for consideration of further pleadings in this matter.

4. We will serve this order on all parties to this proceeding; the Ambassador of Japan in Washington, D.C.; the United States Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-200).

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for Aviation
and 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>*