



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

Issued by the Department of Transportation on August 14, 1998

NOTICE OF ACTION TAKEN -- DOCKET OST 98-4184

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 **AMERICAN INTERNATIONAL AIRWAYS, INC.**, filed **7/24/98, and amended 8/4/98** for:

XX Exemption under 49 U.S.C. § 40109 to provide the following services:

Scheduled foreign air transportation of property and mail between New York, New York, and Porto Alegre and Belo Horizonte, Brazil, and authority to integrate these services with services authorized on AIA's certificate of public convenience and necessity for Route 695 in order to operate services in the New York-Porto Alegre/Belo Horizonte markets directly and via points named in its certificate (between the terminal point Miami, Florida; the intermediate point Bogota, Colombia; and the coterminal points Manaus, Sao Paulo, Recife, and Rio de Janeiro, Brazil). AIA stated that it plans to commence service in these markets with B-747 aircraft on or about August 16, 1998, or as soon as it has obtained all necessary government approvals.

XX Allocation of 1.5 additional weekly frequencies for a total of 4.5 weekly U.S.-Brazil all-cargo flights.

Challenge Air Cargo, Inc. filed an answer to AIA's exemption request, stating that it had no objection to AIA's request as long as Challenge's request for allocation of two additional all-cargo frequencies (Docket OST-98-4277) was also granted. (AIA had originally requested 2.0 weekly frequencies, but subsequently amended its application to request 1.5 weekly frequencies.) At the time of AIA's application, 3.5 frequencies remained unallocated for U.S. carrier scheduled all-cargo services to Brazil.

Applicant rep: **Robert P. Silverberg (202) 944-3304** DOT Analyst: **Linda Senese (202) 366-2367**

DISPOSITION

XX Granted, Subject to conditions (See below).

The actions above were effective when taken: **August 14, 1998**. The exemption authority is effective through **August 14, 2000**, and the frequency allocation will remain in effect as long as AIA continues to hold underlying economic authority for these services.

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

XX Authority granted is consistent with the U.S.-Brazil aviation agreement.

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)

(See Reverse Side)

Conditions: Consistent with our standard practice, the frequency allocation granted is subject to the condition that the frequency allocation will expire automatically and the frequencies will revert to the Department if they are not used for a period of ninety days. The dormancy period for the 1.5 frequencies granted by this Notice will begin on August 16, 1998, AIA's proposed startup date for its additional U.S.-Brazil services.

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 AIA rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless AIA notifies us of its intent to serve such a market and unless and until the Department has completed any necessary selection procedures to 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 AIA's authority by virtue of the route integration exemption granted here, but that are not then being used by AIA, the holding of such authority by route integration will not be considered as providing any preference for AIA in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Remarks: We acted on the amended application request without awaiting expiration of the 15-day answer period. With respect to Challenge's comments, we contemporaneously granted Challenge's application in Docket OST-98-4277 for additional U.S.-Brazil all-cargo frequencies.

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 application 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>.*

APPENDIX A

U.S. CARRIER **Standard Exemption Conditions**

In the conduct of 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 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.