

NEW



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

July 9, 1998

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.

Applications of	<u>NORTHWEST AIRLINES, INC.</u>	filed	<u>4/23/98</u>	in Docket	<u>OST-97-2610</u>
	<u>POLAR AIR CARGO, INC.</u>	filed	<u>4/29/98</u>	in Docket	<u>OST-97-2610</u>
	<u>UNITED AIR LINES, INC.</u>	filed	<u>4/30/98</u>	in Docket	<u>OST-97-2610</u>

XX Allocation of Russian overflight frequencies

Northwest sought allocation of eight weekly frequencies for its services between the United States and India via Amsterdam. Polar sought allocation of one weekly frequency for its service to India via Helsinki, Finland. United sought allocation of 14 weekly frequencies for its U.S.-India services via London.

XX Waiver of the dormancy requirement (Northwest and United)

XX Waiver of the 60-day advance filing requirement set forth in 14 CFR 377.10(c)

Annex 4 of the U.S.-Russia Agreement provides that U.S. carriers collectively may overfly and stop for non-traffic purposes on a total of 28 flights per week (14 flights eastbound and 14 flights westbound) between points in Europe and the Indian subcontinent on approved Air Traffic Services (ATS) routings. These rights may be used in the operation of scheduled or charter air services. Although the Annex to the Agreement has expired, it has continued to be invoked by both parties as an operative source of rights governing the relationship.

The Department granted these overflight allocations to the carriers last year after the carriers stated that they were now usable as a result of the Federal Aviation Administration's determination to amend partially its prohibition on flights operating over Afghanistan by approving one ATS routing--specifically Afghanistan's Wahkan Corridor. See Order 97-7-33. The frequency allocations were subject to our standard dormancy condition. Under that condition, the frequencies would revert automatically to the Department if not used for a period of 90 days. Northwest and United subsequently determined that the Wahkan Corridor was not a feasible alternative to operating their existing services, and their allocations automatically reverted to the Department pursuant to the dormancy condition.¹ Polar has continued to use its overflight allocation. The FAA recently amended its prohibition to permit overflights over Afghanistan on an additional ATS routing--(See SFAR 67, 63 FR 26684, May 13, 1998).

¹ Two of Northwest's allocated frequencies were not subject to the dormancy condition. See Order 97-7-33.

Northwest and United have both requested continued allocation of their overflights, and a waiver of the dormancy requirement or an extension of the standard dormancy period.² They state that the FAA is revisiting its Afghanistan overflight restrictions and may soon widen the Afghanistan airspace, making available a more usable flight path over Afghanistan; and that, in these circumstances, the Department should waive or amend the dormancy requirement until a viable flight path becomes available.³ They further state that they will review their operations to determine the feasibility of the overflight allocations after the FAA makes a decision with respect to the Afghanistan airspace.

No answers were filed to the applications.

DOT Analyst: Gerald Caolo (202) 366-2406

Applicant reps: Megan Rae Poldy (202)-842-3193
Northwest Airlines

Kevin P. Montgomery (202) 785-1995
Polar Air Cargo

Joel Stephen Burton (202) 637-9130
United Air Lines

DISPOSITION

XX Granted frequency allocations (Subject to condition, see below):

XX Granted waiver of the advance filing requirement set forth in 14 CFR 377.10(c)

XX Dismissed request for waiver of the dormancy requirement, see below

The above action was effective when taken: June 16, 1998, thru June 16, 1999

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 Air Transport Agreement between the United States and the Russian Federation entered into force January 14, 1994. Although the Annexes to the Agreement have expired, they continued to be invoked by both parties as the operative source of rights governing the relationship.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holders' certificates of public convenience and necessity

² In their applications, Northwest and United characterized their applications as renewals. However, since the allocation to Northwest for six of its eight frequencies and to United for 14 frequencies granted June 16, 1997 (confirmed by Order 97-7-33) was subject to our standard dormancy condition, and since both carriers did not use their frequencies for more than 90 days, the frequencies automatically reverted to the Department on the 91st day they were not used. Therefore, we have considered the Northwest and United applications for these frequencies as requests for reallocation of their previous frequency rewards. As no dormancy condition was attached to the remaining two frequencies allocated Northwest, we have considered this portion of its application as a request for renewal.

³ In addition, Northwest requested an indefinite waiver from the dormancy condition for the allocations at issue here and United requested that the standard dormancy period be extended from 90 to 150 days.

Conditions:

Consistent with our standard practice, the overflight allocations awarded are subject to the condition that they will expire automatically and the overflights will revert back to the Department if they are not used for a period of 90 days. As with its previous allocation, we will not impose the dormancy condition on the two frequencies allocated Northwest that it has stated that it would operate on an occasional basis.

Remarks

We decided to grant all of the applications. Polar is using its allocation and we found that continued allocation of its weekly frequency was in the public interest. We also found that allocations to Northwest and United were warranted. Subsequent to the filing of these applications and as discussed above, the FAA again amended its flight prohibition over Afghanistan to permit another ATS routing that is adjacent to the Wahkan Corridor. This new routing could facilitate use by Northwest and United of the requested Russian overflight frequencies. We believe that Northwest and United should be permitted another opportunity to use the overflights under these new circumstances.

We have decided to dismiss the requests of Northwest and United to waive or amend the dormancy condition. The carriers had sought the waiver prior to the FAA's action expanding the Wahkan Corridor. Given the FAA's decision to widen the permissible ATS routing over Afghanistan, we regard the waiver as no longer necessary. Should the carriers subsequently experience problems with viable routings, they would be free to seek relief from the dormancy condition at that time.