



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

Served: March 18, 1999

NOTICE

New U.S.-Russia Opportunities

Docket OST-99-5286

Summary

By this notice we request that all U.S. carriers interested in making use of new service opportunities in the U.S.-Russia aviation market file applications, including the information requested below, with the Department no later than March 29, 1999. The new service opportunities include the following: code sharing, scheduled combination service frequencies, scheduled all-cargo service frequencies, and overflight frequencies.

Background

On January 22, 1999, the United States and the Russian Federation signed a Memorandum of Consultations (MOC) and initialed a set of Annexes that provide for a new framework governing air services in the U.S.-Russia market. U.S. carriers may take advantage of new commercial opportunities, including the following:

Code-Sharing Opportunities

Annex V (Cooperative Marketing Arrangements) provides for same country, bilateral, and third-country code sharing for scheduled combination and/or all-cargo services. While there are no restrictions on the number of bilateral and same country code-sharing arrangements that may be operated, all types of code-sharing arrangements (*i.e.* same country, bilateral, and third-country) require an allocation of frequencies and must be operated within the overall level of frequencies available for services in the U.S.-Russia market (see next section below).¹ In this regard, code-share services count as one half of a frequency for a U.S. carrier placing its code on flights in the U.S.-Russia market operated by another airline.

With respect to third-country code-sharing arrangements, U.S. carriers may operate up to five such arrangements, of which three may be operated as of January 22, 1999, and the remaining two as of January 22, 2000. For each U.S.-third country code-sharing arrangement, no more than one intermediate point may be served. In addition, no more than 14 weekly flights can be operated by

¹ Carriers are reminded that 49 U.S.C. § 41716 requires filing with the Department of certain joint venture agreements.

each U.S.-third-country code-sharing arrangement with no more than a daily service being provided in the same city-pair market.²

With respect to the three U.S.-third country code-sharing arrangements that may be operated as of January 22, 1999, two are currently serving the Russian market, Delta Air Lines with Swissair and Northwest Airlines with KLM. In addition, we anticipate that a third arrangement involving third-country code-share services by United and Lufthansa via Germany, which had previously operated in the market, will be able to be resumed soon.³ As the United/Lufthansa code-share operations had previously operated and are expected to be resumed soon, we conclude that those operations should be treated comparably to those of Delta and Northwest and permitted to operate under one of the three designations now available.

Based on the above, the third-country code-share authorizations for which we will entertain applications from interested carriers are the two opportunities that become available January 22, 2000.

Scheduled Combination Service Frequencies

Annex I (Scheduled Air Services) provides that U.S. carriers may operate up to 56 round-trip U.S.-Russia combination frequencies per week until June 30, 2000. These frequencies increase to 63 per week from July 1, 2000, through January 22, 2001.

The Department has previously allocated 50.5 out of the 56 weekly frequencies, as follows:

• Alaska Airlines	–	1
• Reeve Aleutian Airways	–	2
• Delta Air Lines	–	25
• Northwest Airlines	–	8.5
• American Airlines	–	7
• United Air Lines	–	<u>7</u>
	Total ⁴	50.5

While, as described above, a large number of the available frequencies have been allocated, several have never been operated, and some that have been operated cannot now be operated consistent with

² As noted previously, code-share services count as one half of a frequency for a U.S. carrier placing its code on flights in the U.S.-Russia market operated by another airline.

³ The new U.S.-Russia agreement, Annex V, Section 1, provides that third-country code-share services via Germany can be operated as soon as the German-Russian aviation agreement is amended to permit such services. On February 6, 1999, German and Russian delegations agreed to recommend to their respective governments that their aviation agreement should be so amended. On February 10, 1999, United filed a motion to dismiss their complaint under 49 U.S.C. section 41310 against the Russian Federation in Docket OST-97-2888, stating that, pursuant to the new German-Russian agreement, United expects Russia to restore its authority to code share on Lufthansa flights between Frankfurt and Moscow.

⁴ In addition, the Department has reserved five (5) weekly frequencies for Baltia Air Lines to conduct U.S.-Russia services should it commence its proposed U.S.-Russia services authorized by Order 96-2-51. Of these five (5), the Department allocated one and a half (1.5) to Delta by Order 97-9-12, subject to the condition that the frequencies would revert to the Department for Baltia's use should Baltia inaugurate service and demonstrate firm plans to use them.

terms of the new agreement.⁵ In these circumstances, and given our desire to facilitate the current operational plans of carriers seeking to serve the market, we believe that the public interest is best served by making available all frequencies not being used and/or not consistent with the new agreement. While this will result in some previously allocated frequencies reverting to the Department for reallocation, we believe that all carriers will continue to have fair access to the frequencies available for their current operational plans.⁶

Against this background, a total of 30 of the previously allocated frequencies will remain allocated. Of these, 23 are currently being operated. These include the following: seven frequencies for flights operated by Delta in the New York (JFK) - Moscow market; seven frequencies for Delta's code-share service on flights operated with Swissair; seven frequencies for Northwest's code-share service on flights operated with KLM; and two frequencies for flights operated by Reeve Aleutian in the Anchorage-Russian Far East markets. In addition, as discussed above, United will resume operations with its seven allocated frequencies for its code-share services with Lufthansa.

A total of 33 frequencies will be available for additional U.S. carrier services. Twenty-six are available now and an additional seven will become available effective July 1, 2000.⁷

Scheduled All-Cargo Service Frequencies

Annex I (Scheduled Air Services) provides that U.S. carriers may operate up to 16 round-trip all-cargo U.S.-Russia frequencies until June 30, 2000. The Department has previously allocated these flights as follows: Polar Air Cargo – eight frequencies; Federal Express Corporation – five frequencies; and Evergreen International Airlines – three frequencies.⁸ From July 1, 2000, through January 22, 2001, the number of available frequencies will increase to 23 per week. Therefore, a total of seven additional scheduled all-cargo service frequencies will be available for allocation here. These additional frequencies will become effective July 1, 2000.

Overflights

A. Europe-Southeast Asia

Annex IV (Overflights) provides that U.S. carriers may operate 14 weekly (seven eastbound and seven westbound) Europe-Southeast Asia overflights for scheduled combination and/or all-cargo services via Tashkent until January 22, 2000. The frequencies increase to 28 overflights per week

⁵ The latter situation would include, for example, cases of third-country code-share arrangements whose services had exceeded the newly agreed maximum level of 14 weekly flights (translating, per the equivalency formula of the new agreement, into use of seven allocated weekly frequencies).

⁶ A total of 20.5 of the previously allocated frequencies will revert to the Department for reallocation. Alaska and American have one and seven allocated frequencies, respectively, that are not being used. The new agreement limits Northwest to using no more than 7 of its 8.5 allocated weekly frequencies for its code share service with KLM, yielding 1.5 of Northwest's frequencies that are not consistent with the new agreement. Delta is using 7 of its 25 allocated frequencies for flights operated by Delta in the New York-Moscow market. In addition, the new agreement limits Delta to using no more than 7 of its allocated frequencies for its code share service with Swissair. Therefore, Delta's 11 remaining allocated frequencies are either not being used or are not consistent with the new agreement.

⁷ The Department will continue to reserve up to five weekly frequencies for services by Baltia should it commence the services authorized by Order 96-2-51 to the extent that the Department continues to find it in the public interest to do so.

⁸ Order 96-2-17.

(14 eastbound and 14 westbound) from January 23, 2000, through January 22, 2001. This is a new overflight route that was not previously available under the agreement between the United States and the Russian Federation. All of these overflights will be available for allocation to U.S. carriers.

B. Europe-Indian Subcontinent

Annex IV (Overflights) provides that U.S. carriers may overfly and stop for non-traffic purposes on 28 flights per week (14 flights eastbound and 14 flights westbound) for scheduled combination and/or all-cargo services between points in Europe and the Indian subcontinent on Air Traffic Services routings approved for international services until January 22, 2001. Of these, 23 have been allocated to U.S. carriers: Northwest – eight frequencies, United – 14 frequencies, and Polar – one frequency. However, most of these authorized services also involve flights over Afghanistan. Because of Federal Aviation Administration (FAA) restrictions that remain in effect on such Afghanistan overflights, some of these carriers are not able now to use the Russia overflights.⁹ Five flights remain unallocated.

Applications/Evidentiary Submissions

To promote U.S. carrier services in the market, we invite all U.S. carriers interested in using any of the available opportunities described above to file applications, providing the information requested below. All applications (for operating authority, frequency allocation, and/or designation) should be filed with the Department of Transportation, Dockets, Docket OST-99-5286, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590.¹⁰ Applications should be filed by March 29, 1999; answers to applications should be filed by April 5, 1999; and replies to answers should be filed by April 12, 1999.

Carriers without the requisite operating authority should file exemption/designation applications as well as frequency allocations and, where applicable, requests for statements of authorization to serve the affected markets in conjunction with their code-share partners. Carriers with the requisite underlying authority and statements of authorization need only file requests for a designation and/or a frequency allocation.

All applications should include, at a minimum, the following information: (a) the proposed startup date; (b) the markets to be served, frequencies requested per market, and the duration of service in each market, if not to be provided on a year-round basis; (c) type of aircraft to be used, including, if applicable, the seating configuration (first, business, economy), to be used in each market; (d) where applicable, the code-share partner involved and which carrier would be operating the flights and the country and specific intermediate point over which the services would be provided; and (e) existing authority held to conduct the operations, if applicable. In addition, unless previously filed and approved by the Department, the carriers must provide as a part of their applications, copies of the

⁹ Due to the unique circumstances involved, the Department has waived the standard dormancy condition imposed on frequency allocations until the FAA reauthorizes flights over Afghanistan. See Notices of Action Taken dated September 17, 1998 and October 22, 1998 in Docket OST-97-2610.

¹⁰ The original submission is to be unbound and without tabs on 8 1/2" x 11" white paper using dark ink (not green), to facilitate use of the Department's docket imaging system. Submissions may also be sent using the Electronic Submission capability at the Dockets DMS web site, <http://dms.dot.gov>.

relevant cooperative service arrangements. Applicants are free to submit any additional information that they believe will help in making our decision.

Some carriers have already filed applications to serve Russia. Continental Airlines has filed an application to operate third-country code-share service with Air France (Docket OST-99-5049) and American Airlines has applied to operate third-country code-sharing service with Finnair (Dockets OST-98-4522 and OST-98-4328). We will consolidate these applications into the docket established in this notice. However, these carriers should, if necessary, update their applications with the information requested in this notice by the established application date, or file new applications, making clear whether such new applications supersede those that were previously filed, or are intended to supplement those that have already been filed.

Except for the procedural dates, exemption/designation/frequency applications should conform to part 302, Subpart D of our regulations (14 CFR Part 302). These rules require applicants to serve "a notice that an application has been filed" on certain persons. Applications must also "promptly provide those persons with copies of the application and supporting documents" upon request. To the extent that new applicants and, thus, carriers not on the required service list, may file for authority, parties also should be prepared to provide such new applicants with a copy of their applications and supporting documents.

We will authorize service of documents by facsimile and by electronic mail. Carriers that are interested in such service, however, should state if they want service by email and should provide interested parties with their FAX numbers and/or email address.

We will serve this notice on all U.S. certificated air carriers.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Dated: March 16, 1999

*An electronic version of this notice is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*