

139208



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

Issued by the Department of Transportation on September 21, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST-2001-10375 - 3

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 World Airways, Inc. filed 8/8/01 for:

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail from points behind the United States, via the United States, and intermediate points to a point or points in Nigeria and beyond.

XX Allocation of four weekly U.S.-Nigeria combination service frequencies¹

Applicant rep: David M. Kirstein 202-861-1756 DOT Analyst: Sylvia Moore 202-366-6519

DISPOSITION

XX **Granted exemption and frequency allocation** (subject to conditions, see below)

XX **Granted route integration authority sua sponte** (subject to conditions, see below; see also remarks below)

XX **Balance dismissed** (see remarks)

The above action with respect to World's exemption authority was effective when taken: September 21, 2001, through September 21, 2003.

The above action with respect to World's frequency allocation was effective when taken: September 21, 2001, and will remain in effect indefinitely, subject to conditions.

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

XX **The authority granted is consistent with the aviation agreement between the United States and Nigeria.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX** **Holder's certificates of public convenience and necessity**

XX **Standard exemption conditions (attached)**

(See Reverse Side)

¹ Under the U.S.-Nigeria aviation agreement, there is no limitation on the number of U.S. carriers that may be authorized to serve the market. The agreement, however, provides for an expansion in the number of flights U.S. carriers may operate on a phased-in basis each year through March 31, 2006. Currently, U.S. carriers may operate seven weekly roundtrip combination frequencies until March 31, 2002. Seven more frequencies become available April 1, 2002. World proposes to initiate service with three weekly frequencies on or about April 15, 2002, between Atlanta, New York, or Baltimore and Lagos, and add a fourth frequency before April 1, 2003.

Conditions: The authority granted to serve intermediate and beyond points is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority by virtue of either the present action or other action of the Department.

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

Consistent with our standard practice, the frequency allocation granted is subject to the condition that if any of the frequencies are not used for a period of 90 days, the allocation as to each of those frequencies will expire automatically and the unused frequencies will revert to the Department for reallocation. The 90-day dormancy period will begin April 15, 2002, for all four frequencies (the date on which World proposes to commence service with three of the frequencies), or the date on which World actually begins service with these frequencies, whichever occurs earlier.²

Remarks: We dismissed World's application to the extent that it requests authority from points behind the United States. The authority to conduct operations from points behind the United States is inherent in the authority that we award U.S. carriers to perform foreign air transportation.

The route integration authority granted here will permit World to combine its existing certificate and exemption authority with the broad U.S.-Nigeria authority granted in this docket, which includes authority to operate via intermediate points and beyond Nigeria subject to the conditions set forth in this notice.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the exemption authority 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 or dismissed, 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/reports/reports_aviation.asp*

² Should World not begin service with any of the frequencies by July 14, 2002, the authority for the unused frequency (ies) will automatically expire and the frequency (ies) will revert to the Department for reallocation unless World timely requests and is granted a waiver from the 90-day dormancy condition.

APPENDIX

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

In the conduct of operations authorized by the attached notice, 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) Except as specifically exempted or otherwise provided for in a Department Order, 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, including all FAA requirements concerning security; 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.