



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

Issued by the Department of Transportation on December 23, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-19375

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 **CONTINENTAL AIRLINES, INC.** filed **10/12/04 (amended 12/6/04)**¹ 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 between New York/Newark and Moscow, Russia, as well as integration authority to combine this authority with Continental's other existing exemption and certificate authority.² Continental intends to begin service on this route on March 25, 2006.

XX Allocation of seven (7) U.S.-Russia code-share frequencies:

Continental requests seven (7) U.S.-Russia frequencies to permit Continental to offer daily New York/Newark-Moscow service during the peak season.

XX Waiver from 90-day dormancy condition:

Continental requests a waiver of the Department's standard dormancy conditions imposed on frequency allocations to enable Continental to operate fewer than daily flights during the off-peak seasons.³

Applicant rep: **R. Bruce Keiner, Jr. (202) 624-2615** DOT Analyst: **Thuy H. Cooper (202) 366-5423**

DISPOSITION

XX **Granted (subject to conditions, see below)**

The exemption authority granted was effective when taken: **December 23, 2004**, through **December 23, 2006**.

The frequency allocation and waiver of dormancy conditions was effective when taken: **December 23, 2004**, and will remain in effect indefinitely, subject to the conditions described below.

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

¹ Continental amended its application to revise the proposed startup date from May 5, 2005, to March 25, 2006. Continental states that a later startup date will provide more time for the carrier to implement the proposed service at Moscow's Domodedovo Airport.

² Continental had received New York-Moscow authority for codeshare services with Delta, and was allocated 3.5 U.S.-Russia frequencies for those services (see Notice of Action Taken, dated August 21, 2003, in Docket OST-03-15502). On February 13, 2004, Continental advised the Department that it was not codesharing with Delta on the New York-Moscow route, and the 3.5 frequencies reverted to the Department for reallocation.

³ Continental intends to operate daily flights during the May-September peak season, five weekly flights in spring and fall, and four weekly flights in the winter.

XX The Annexes to the U.S.-Russia Air Transport Agreement (Agreement) expired on January 22, 2001. However, the operations proposed by Continental are in conformance with the Annexes agreed to by both sides *ad referendum* on April 11, 2002.

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)**

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

Remarks: Continental advised us that it had polled all the parties served with its application for exemption, frequency allocation, and waiver of the standard dormancy conditions and that none had objected. Under those circumstances, we decided to grant Continental's request for waiver of the Department's standard dormancy conditions normally imposed on frequency allocations, to allow the carrier to adjust its New York/Newark-Moscow service in accordance with seasonal demand. However, should the carrier decide not to institute services using all or a portion of the seven U.S.-Russia frequencies or discontinue all or portion of the seven U.S.-Russia frequencies (other than seasonally), the carrier will be required immediately to notify the Department of such and to return the unused frequencies for reallocation.⁴

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 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 seven (7) 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

⁴ This notice should be filed in Docket OST-2004-19375 and served on all parties to this proceeding.

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier 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 all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; 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.

