



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

Issued by the Department of Transportation on February 23, 2005

NOTICE OF ACTION TAKEN -- DOCKET OST-1996-1182

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).

Applicant: **Jat Airways**¹

Date Filed: January 14, 2005

Relief requested: Exemption authority from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail between Belgrade, Serbia, on the one hand, and New York, New York, and Chicago, Illinois, on the other hand. Jat Airways would conduct these services pursuant to a wet lease arrangement with a duly authorized and properly supervised U.S. or foreign air carrier.

If renewal, date and citation of last action: New authority²

Applicant representative: Bruce L. McDonald (202) 719-7000

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: United Air Lines, Inc. (United) filed comments in response to Jat Airways' application stating that while it does not oppose Jat Airways' request, it suggests that we defer action on the request until April 2005 to allow the United States and Serbia/Montenegro to conclude an open skies bilateral aviation agreement. United states that it currently holds out third-country code-share service between the U.S. and Belgrade, via Munich, in conjunction with Lufthansa, and may pursue additional U.S.-Serbia/Montenegro services in the future. In that regard, United believes that to ensure the United States does not forfeit leverage in the pursuit of an open skies agreement, the Department should defer action on Jat Airways' request until Serbia/Montenegro enters into an open skies agreement with the United States. Alternatively, United urges us to limit the duration of any approval to a period of less than 180 days to allow the Department to reassess the state of the U.S.-Serbia/Montenegro aviation relationship prior to granting Jat Airways further authority. No further comments were filed.

DISPOSITION

Action: Approved

Action date: February 23, 2005

Effective dates of authority granted: February 23, 2005-February 23, 2006

Basis for approval (bilateral agreement/reciprocity): Reciprocity with Serbia and Montenegro³

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

Standard exemption conditions (Attached)

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¹ By letter dated February 4, 2005, Jugoslovenski Aerotransport (JAT) filed a request under 14 CFR Part 215 of our rules to change its name from Jugoslovenski Aerotransport (JAT) to Jat Airways. By letter dated February 7, 2005, we acknowledged Jugoslovenski Aerotransport's name change to Jat Airways under Part 215.

² Jat Airways previously held authority in this docket to engage in scheduled foreign air transportation of persons, property and mail between Belgrade, Serbia, on the one hand, and New York, New York, on the other hand, but exclusively pursuant to a codeshare arrangement with Uzbekistan Airways. See Notice of Action Taken issued October 2, 2003, in the present docket. That code-share relationship has since terminated (see Docket OST-2003-15879).

³ The Republic of Serbia, together with the Republic of Montenegro, is a constituent part of The State Union of Serbia and Montenegro.

Special conditions/Partial grant/Denial basis/Remarks: Jat Airways may not conduct U.S. operations with its own aircraft and crews without further order of the Department.

The Department has considered the concerns raised by United but does not believe, in the circumstances presented, that withholding the authority requested by Jat Airways would further our efforts to reach an open skies agreement with Serbia and Montenegro.

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

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) 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/deferred/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 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*

Attachment

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, 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;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

05/2004