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DEPT. OF TRANSPORTATION  
DOCKET SECTION

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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D. C.

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Application of :  
AMERICAN AIRLINES, INC. :  
under 49 USC 40109 for exemption (U.S.- :  
Riga, Latvia; Tallin, Estonia; and St. :  
Petersburg, Russia via Helsinki (code- :  
sharing with Finnair Oyj) :  
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OST-98-4522 -4

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Joint Application of :  
AMERICAN AIRLINES, INC. :  
and :  
FINNAIR OYJ :  
for statements of authorization under :  
14 CFR Part 212 (reciprocal codesharing :  
services) :  
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Undocketed

JOINT REPLY OF AMERICAN AIRLINES, INC.  
AND FINNAIR OYJ

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October 23, 1998

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Application of

AMERICAN AIRLINES, INC.

OST-98-4522

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JOINT REPLY OF AMERICAN AIRLINES, INC.  
AND FINNAIR OYJ AND MOTION FOR LEAVE TO FILE

American Airlines, Inc. and Finnair Oyj hereby submit this joint reply to the answers filed by Delta Air Lines, Inc. and United Air Lines, Inc. to the captioned applications. To the extent required, American and Finnair request leave to file, which should be granted in the interest of a complete record.<sup>1</sup>

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<sup>1</sup>Under 14 CFR 302.407, American has the right to file a reply as an applicant for exemption. Under 14 CFR Part 212, applicants for statements of authorization do not have an explicit right to file replies.

I. DELTA

The only issue raised by Delta is the American/Finnair proposal to serve St. Petersburg, Russia on a codeshare basis. Delta correctly states that under the Air Transport Agreement between the United States and Russia, codesharing by a U.S. and a third-country carrier requires an allocation of frequencies. Delta further notes that American currently holds seven weekly frequencies to serve between Chicago and Moscow (Notice of Action Taken, OST-98-4328, September 18, 1998), and that Delta would not object to use of those frequencies for the subject codesharing service.

Under the codesharing provisions of the U.S.-Russia bilateral agreement, each direct service frequency may be used for two codesharing frequencies. American intends to serve St. Petersburg under its codeshare arrangement with Finnair up to twice a day (depending on Finnair's seasonal schedules), which would require 14 weekly frequencies. Until American inaugurates direct Chicago-Moscow flights with its own aircraft and crews, American proposes to use its frequency allocation for that service in order to serve St. Petersburg on a codeshare basis with Finnair.

II. UNITED

United states that the American/Finnair application with respect to St. Petersburg should be dismissed because the carriers have not sought a frequency allocation under the U.S.-Russia bilateral agreement, nor have they shown how many codeshare flights they would offer between Helsinki and St. Petersburg. As stated above, American presently holds seven weekly U.S.-Russia frequencies for Chicago-Moscow service that American has not yet inaugurated, and it intends to use these frequencies for up to 14 weekly codeshare frequencies with Finnair in the interim. In these circumstances, there is no basis for United's request to dismiss the St. Peterburg portion of the American/Finnair application, as American plainly has the requisite frequencies to support its proposed service.

United also appears to object to any further authorization of U.S.-Russia third-country codesharing because Russia has not approved the codesharing services proposed by United and its alliance partner Lufthansa (p. 3 n. 2), but United fails to explain how denial of codeshare rights to American/Finnair by the Department could help United secure needed authority from Russia. The Department should not single out American/Finnair to be held hostage to the United/Lufthansa problem. The Department has authorized third-country codesharing into Russia by United/Lufthansa, Northwest/KLM,

Delta/Swissair, and Delta/Austrian. To enhance competition in the marketplace, American/Finnair should also be authorized to serve Russia. The Department should resolve the United/Lufthansa problem in the context of United's IATFCPA complaint pending in OST-97-2888 (Order 98-2-3, February 4, 1998), and not by punishing American/Finnair.

Finally, United contends that the exclusivity provision in the American/Finnair agreement should be disallowed unless the Department permits a "similar" exclusivity arrangement between United and All Nippon Airways, which is currently the subject of a pending petition for review of staff action submitted by United on August 17, 1998 (undocketed). United is mistaken in characterizing the two provisions as "similar."

Section 27.1 of the American/Finnair agreement provides that:

"The Parties agree that Finnair will be the sole carrier with which American offers nonstop codeshared service between the United States and Finland, and that American will be the sole United States carrier offering codeshared service on the Finnair nonstop services between the United States and Finland. In addition, the Parties agree that American will be the sole United States carrier with which Finnair operates codeshare service within the United States and that Finnair will be the sole Finnish carrier with which American operates codeshare service within Finland."

Section 7 of the United/ANA agreement provides that:

"This agreement is non-exclusive and does not preclude either NH or UA from entering into or maintaining existing marketing relationships, including code sharing, with other carriers. Notwithstanding the preceding sentence, except to the extent of NH's code share, frequent flyer, and lounge access arrangements with its existing U.S. flag carrier partners, this agreement is exclusive as it relates to NH's participation in code sharing, the frequent flyer program, or the lounge access program of another U.S. flag carrier, and as it relates to UA's participation in code sharing, the frequent flyer program, or the lounge access program of another Japanese flag carrier."

As is readily evident, the United/ANA provision is far broader, as it prohibits ANA from codesharing with any other U.S. carrier, not merely in the U.S.-Japan market, but in any market worldwide. Moreover, it prohibits ANA from participating in the frequent flyer or lounge access programs of any other U.S. carrier, again on a worldwide basis. The American/Finnair exclusivity provision, by contrast, is limited to codesharing in the U.S.-Finland market, and does not restrict either carrier's participation in any other frequent flyer or lounge access programs.

However, if the Department determines to disallow the American/Finnair exclusivity provision, it should only do so by striking similar provisions that appear in any number of code-share arrangements the Department has approved since such partnerships first appeared in the international arena about 10 years ago.

For example, in American's reply of June 11, 1997 in the American/TACA Group proceeding, OST-96-1700, American cited several codesharing agreements with exclusivity provisions that are similar to, or more restrictive than, the American/Finnair clause (pp. 25-27). See United/Thai Airways, filed May 28, 1996, Section 7; United/Air India, filed December 4, 1995, Section 7; United/SAS, filed September 26, 1995, Section 9.2; United/Lufthansa, filed February 29, 1996, Section 6.1; Delta/Austrian Airlines, filed November 13, 1995, Article 18. It would clearly be unfair and arbitrary for the Department to permit those provisions to remain in force, while disallowing the American/Finnair provision.

#### CONCLUSION

The American/Finnair codesharing proposal promises substantial consumer benefits. American will gain its first on-line access to Finland, as well as to Latvia, Estonia, and Russia; and Finnair will gain on-line access to numerous additional U.S. points. Apart from the St. Petersburg and exclusivity issues discussed above, there are no objections to the proposed arrangement. Neither of the matters seized upon by Delta and United are of such moment that the Department should delay expedited approval of the pending applications. These applications should be promptly granted as being fully consistent with the public interest, and with the Department's

policy statement on international air transportation, 60  
Federal Register 21841, May 3, 1995.

Respectfully submitted,



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October 23, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first-class mail on all persons named on the attached service list.

  
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CARL B. NELSON, JR.

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