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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION  
DOCKET SECTION

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Application of )  
)  
AMERICAN AIRLINES, INC. )  
)  
under 49 U.S.C. §40109 for exemption (U.S.-Riga, )  
Latvia; Tallin, Estonia; and St. Petersburg, Russia )  
via Helsinki (code sharing with Finnair Oy)) )

Docket OST-98-4522 - 5

Joint Application of )  
)  
AMERICAN AIRLINES, INC. )  
and )  
FINNAIR OY )  
)  
for Statements of Authorization under 14 CFR Part )  
2 12 (Reciprocal Codeshare Service) )

Undocketed

**RESPONSE OF UNITED AIR LINES, INC.**  
**AND MOTION FOR LEAVE TO FILE**

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**DATED: November 3, 1998**

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**DATED: November 3, 1998**

**RESPONSE OF UNITED AIR LINES, INC.  
AND MOTION FOR LEAVE TO FILE**

United Air Lines, Inc. ("United") submits the following answer to the joint reply of American Airlines, Inc. ("American") and Finnair dated October 23, 1998:<sup>1</sup>

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<sup>1</sup> United requests leave to file this response to address issues relating to the American/Finnair code-share service to Russia. In their original application, those carriers did not include any request for frequencies to implement their code share to Russia. American has now indicated that it seeks to use the 7 U.S.-Russia frequencies allocated to it for its own Chicago-Moscow direct service to support its Finnair code-share service. That is, in effect, an amendment of the joint application and United requests leave to file a response to the joint application, as amended, in relation to the U.S.-Russia code-share service.

In their Joint Reply, American and Finnair state their intention to use 7 frequencies already allocated to American to support their proposal for 14 weekly code-share services between Helsinki, Finland and St. Petersburg, Russia. These 7 frequencies were allocated to American by Notice, dated September 18, 1998, Docket OST-98-4328, in response to American's proposal to operate daily service between Chicago and Moscow beginning next spring. United takes no position on American's proposal to use these frequencies for code-share service except to note that if the Department is prepared to allow American to reapply its U.S.-Russia frequency allocation, then other carriers holding U.S.-Russia frequency allocations should be afforded the same flexibility to reapply their allocations among different services.

2. United urges the Department, however, to defer action on the requests of American and Finnair for the necessary authority to code share between Helsinki and St. Petersburg until such time as the Russian Federation has allowed United to restore its code-share service to Russia in conjunction with Lufthansa German Airlines.<sup>2</sup> To grant another U.S./third-country carrier code share in the face of Russia's discriminatory denial of the United/Lufthansa and Delta/Austrian code shares would be a serious mistake. Russia has previously demonstrated its propensity to decide for itself which U.S./third-country carrier code shares it will permit to operate and which it will deny. Russia has, for example, allowed the Northwest/KLM and

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<sup>2</sup> United will not again recite the details of the dispute between the U.S. and the Russian Federation regarding that country's denial of United's exercise of its code-share rights. These matters have been fully briefed in Docket OST-97-2888 in which United filed a complaint against the Russian Federation under the IATFPCA. The Department granted that complaint by Order 98-2-3.

Delta/Swissair code shares to operate while denying renewed authority to United/Lufthansa and Delta/Austrian.

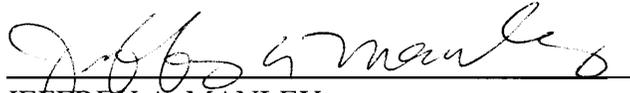
The U.S. should not give Russia an opportunity either to approve or deny the American/Finnair code share. Based on Russia's previous actions, its reaction to this code share is difficult to predict. Given Russia's arbitrary and discriminatory actions with respect to other similar code shares, the U.S. cannot allow American and Finnair to seek Russian approval of their code share with any assurance as to the outcome.

Approval by Russia of the American/Finnair code share would, however, be prejudicial to United as well as to efforts of the U.S. to gain restoration of United's code-share rights with Lufthansa. If Russia discriminatorily approves the American/Finnair code share, this would permit those carriers to build a competitive presence in the U.S.-Russia market while United and Lufthansa remain excluded by Russia's contrary action with respect to their alliance. All of these code shares are fully consistent with the code-share term of the U.S./Russia agreement. To the extent that there is any need to choose among them (which, under present circumstances, there is not), it is the U.S. and not Russia that should make that choice. Given Russia's past record, the submission of another code-share partnership would inevitably be interpreted by Russia as inviting it again to exercise such a choice which does not serve the interest of the U.S. in resolving the existing problems arising from past choices.

3. In conclusion, United urges the Department to defer action on the issuance of the statement of authorization and exemption authority needed to support code sharing by American and Finnair between Helsinki and St. Petersburg. Such deferral should continue until such time

as the U.S. government has satisfactorily resolved the outstanding issues arising from Russia's discriminatory refusal to renew United's code-share authority with Lufthansa.<sup>3</sup>

Respectfully submitted,



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**DATED: November 3, 1998**

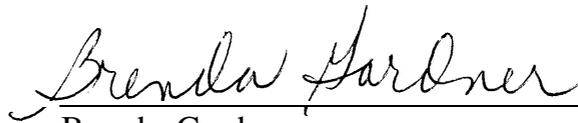
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<sup>3</sup> The Department previously deferred action on several Northwest/KLM applications for code-share services to various countries based on United's position that action should be deferred with respect to countries where there were either ongoing bilateral discussions in which code-share rights were at issue or no bilateral agreement providing for code-share rights. Such deferral continued until resolution of bilateral issues between the U.S. and Germany which had delayed approval of the United/Lufthansa code-share applications. See, Order 94-9- 11. The same reasoning here supports deferral of the American/Finnair code share to Russia.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Response of United Air Lines, Inc. and Motion for Leave to File all persons on the attached Service List by causing a copy to be sent via first-class mail, postage prepaid.

  
\_\_\_\_\_  
Brenda Gardner

**DATED: November 3, 1998**

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