

ORIGINAL

DEPARTMENT OF TRANSPORTATION

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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DOCKET SECTION

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Application of)
)
CONTINENTAL AIRLINES, INC.)
)
for an exemption and frequency allocation)
(U. S.-Russia code sharing))

Docket OST-99-5049 - 3

ANSWER OF UNITED AIR LINES, INC.

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DATED: February 10, 1999

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Application of)	
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CONTINENTAL AIRLINES, INC.)	Docket OST-99-5049
)	
for an exemption and frequency allocation)	
(U. S.-Russia code sharing))	
)	

DATED: February 10, 1999

ANSWER OF UNITED AIR LINES, INC.

United Air Lines, Inc. ("United") submits the following answer to the above-captioned application of Continental Airlines, Inc. ("Continental"):

1. By its application, Continental seeks authority to engage in third-country code-share services between two gateways in the U.S. (Newark and Houston) and two gateways in Russia (Moscow and St. Petersburg) via Paris under a code-share agreement with Air France. Continental requests exemption authority to hold out this service and an allocation of seven weekly U.S.-Russia combination frequencies. Continental requests (p. 1) that its frequencies be allocated from among "those now unused by American, Baltia, Delta and United."

2. United is authorized to offer code-share services to Russia via Frankfurt in conjunction with Lufthansa. Orders 94-4-43, 96-3 -3 7, 98- 1- 17 and 98-4-8. United has, been allocated seven U. S.-Russia combination service frequencies to support 14 weekly services

between the U. S. and Russia via Frankfurt. Order 96-10- 1. United successfully offered code-share services under this authority in 1994-95 but was forced to terminate service in the summer of 1995 due to refusal by the Russian government to renew United's authority. That refusal was subsequently determined by the Department to be a violation of the International Air Transportation Fair Competitive Practices Act. Order 98-2-3.

United continues to hold the necessary underlying authority (including certificate authority, designation and frequency allocation) and Lufthansa holds the necessary statement of authorization to code share for United between Frankfurt and Moscow. United has been advised that late last week the governments of Russia and Germany resolved the dispute which was the source of Russia's 1995 refusal to renew United's code-share authority.' United's U.S.-Russia frequency allocation is subject to a dormancy condition which starts to run 90 days from "the date on which the Government of the Russian Federation permits United to restore its authorized code-share services with Lufthansa in the U.S.-Russia market ." Order 96-10- 1 at 3. Consistent with the requirements of the dormancy condition and based on the recent Germany/Russia accommodation, United is already fully authorized to provide code-share services with Lufthansa between the U.S. and Moscow via Frankfurt and should be treated like an incumbent carrier for purposes of future code-share operations to Russia. ²

¹ Based on the Russia/Germany accommodation, United has today moved to dismiss its IATFPCA complaint against the Russian Federation.

² To the extent that United's seven U.S.-Russia combination frequency allocation has been "unused", as Continental claims in its application, that is due to the unlawful actions of the Russian government, not to any decision on United's part. United is prepared to put those

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3. Under the new U.S./Russia agreement on code sharing concluded last month, the U.S. will be limited to five third-country code-share arrangements involving services to Russia. Only three such arrangements may begin services immediately, with the remaining two to be operated as of January 22, 2000. In addition to United's code-share service with Lufthansa, which as noted above is already fully authorized and was operated for so long as the Russian Federation permitted, there are two other third-country code-share arrangements already in place – Northwest/KLM via Amsterdam with 8.5 frequencies and Delta/Swissair via Zurich with 8.5 frequencies. Orders 96-10- 1 and 97-7-33 .³

4. In this regard, it should be noted that United was authorized to offer 14 weekly code-share frequencies between Frankfurt and Moscow under the previous U. S./Russia code-share agreement. Northwest is currently operating 10 weekly Amsterdam-Moscow code-share frequencies and Delta, 14 weekly Zurich-Moscow code-share frequencies.⁴ All of these Moscow

² (. . . continued)

frequencies back to use as quickly as possible in light of the resolution of the dispute between Germany and Russia as well as the new U.S./Russia agreement. The frequency allocation is not, in any event, "dormant" under the applicable conditioning language in the Department's allocation order.

³ Delta also holds certain U. S.-Russia frequency allocations for code-share services via Vienna and Brussels with Austrian Air and SABENA, respectively. These services have not been implemented due to refusal by the Russian government to grant the necessary approvals, and it is highly doubtful that Delta would be able to implement them under the more restrictive terms of the new agreement. See Order 97-1 1-19. Because Delta's U.S.-Russia frequencies are related to three different code-share arrangements, it is not entirely clear how many frequencies are actually allocated to the Swissair code share.

⁴ Northwest's code-share services are illustrated in Attachment 1. Delta's are contained in the OAG WORLDWIDE (February 1999) at 1396. In Summer 1999 schedules in CRS displays,
(continued. . .)

services exceed the maximum of seven weekly code-share frequencies per city pair allowed under the new U. S./Russia agreement.

The Department must address the issue of whether such Moscow city-pair frequencies in excess of the bilateral limit are to be allowed to continue notwithstanding the terms of the new agreement. There is no provision in the new U.S./Russia agreement for “grandfathering” historic operations at levels in excess of the agreed city-pair limits. If the Russian Federation, however, is to allow Northwest/KLM and Delta/Swissair to exceed the weekly city-pair limit based on their historic operations, then United/Lufthansa should be entitled to the same flexibility based on their own historic operations of 14 weekly code-share frequencies between Frankfurt and Moscow.⁵

5. Continental is seeking immediate authority to offer code-share services to Russia via Paris and would require one of the three immediately available third-country code-share opportunities as well as an allocation of seven U. S.-Russia combination frequencies. United opposes the grant of Continental’s request to the extent it would prejudice United’s ability to

⁴ (. . . continued)

Delta’s code share reflects only seven weekly frequencies, indicating Delta’s apparent intention to comply with the limits of the new U.S./Russia MOU.

⁵ The new U.S./Russia bilateral agreement also limits each of the five third-country code-share arrangements to no more than a total of 14 weekly frequencies. When the Delta/Swissair and Northwest/KIM services to St. Petersburg are included in their total operation, each of these partnerships is operating a total of 17 weekly frequencies to Russia, or three more than the allowable weekly limit of 14. See OAG WORLDWIDE, February 1999 at 1394, 1396 for Delta/Swissair schedules and Attachment 1 for Northwest/KIM schedules.

exercise its existing third-country code-share authority with Lufthansa! To the extent that the Department determines that carrier selection is necessary involving incumbent third-country code shares as well as those involving new arrangements, United's service with Lufthansa is far superior to that offered by Continental and Air France. United and Lufthansa offer **nonstop-to-nonstop** connections at Frankfurt to Russia from eleven U.S. gateways, as opposed to the two U.S. gateways that would be served by Continental and Air France.⁷ What is more, under the new U.S./Russia agreement, United and Lufthansa will expand their services to include other eligible gateways in Russia such as St. Petersburg and Nizhniy Novgorod to the extent consistent with the new agreement.

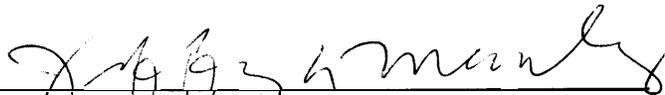
6. United urges the Department to defer action on Continental's application for the time being until the future plans of all potential third-country code-share partnerships (including the incumbents United/Lufthansa as well as Northwest/KLM and Delta/Swissair) under the new agreement are made known. The Department should issue a notice directing all interested carriers to file applications for U.S./Russia third-country code-share opportunities consistent with the code-share provisions of the new U.S./Russia MOU. By requiring all interested carriers to file their service proposals on the same date, the Department will ensure equal treatment of all

⁶ Continental previously had entered into a code-share arrangement with Aeroflot Russian International Airlines. Under that arrangement, Continental would not have required one of the three available third-country code-share opportunities. Continental has, however, dismissed its application for authority to code share with Aeroflot. See Notice dated January 26, 1999 withdrawing the joint application in docket OST-97-3092 and the related joint application for statements of authorization.

⁷ The United/Lufthansa code share offers nonstop service between Frankfurt and both of the U.S. gateways that would be served by Continental/Air France (Newark and Houston).

applicants.' At this point, United is prepared to say that it intends to resume code-share services to Moscow via Frankfurt as soon as its authority has been restored and that it will modify those services to include additional points in Russia consistent with the terms of the new U.S./Russia MOU.⁹

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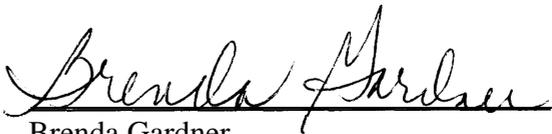
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⁸ All applicants should be required to file their schedules illustrating nonstop-to-nonstop connections between U. S. and Russian gateways.

⁹ United is currently reviewing its future schedules as well as those of Lufthansa to determine the best connections available between U. S. points and Moscow/St. Petersburg/Nizhniy Novgorod via Frankfurt. Appropriate applications or notices relating to such services will be filed in response to a Departmental notice specifying dates and content for such submissions.

CERTIFICATE OF SERVICE

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


Brenda Gardner

DATED: February 10, 1999

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