

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION

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DOCKET SECTION

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Application of)
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AMERICAN AIRLINES, INC.)
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under 49 U.S.C. §40109 for an exemption)
(Chicago-Moscow))
)

Docket OST-98-4328 - 3

ANSWER OF UNITED AIR LINES, INC.

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DATED: August 31, 1998

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

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AMERICAN AIRLINES, INC.)	Docket OST-98-4328
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DATED: August 31, 1998

ANSWER OF UNITED AIR LINES, INC.

United Air Lines, Inc. ("United") submits the following answer to the application of American Airlines, Inc. ("American") for an exemption authorizing it to commence daily Chicago-Moscow service:

1. United takes no position on American's application so long as any frequency award made to American by the Department in connection with grant of an exemption authorizing Chicago-Moscow service ~~does not affect the seven frequencies~~ United currently holds ~~by~~ to American's statement, United's seven frequencies are not dormant.

2. In Order **96- 10- 1**, the Department made special provisions with respect to dormancy of frequencies allocated in the U.S.-Russia market. The Department's special provisions were put in place in light of the refusal of the Russian government to renew the approvals of United's code-share service to Moscow with Lufthansa. The Department distinguished United's seven frequencies from those of other carriers and held that "the 90-day

dormancy period will begin with respect to United on the date on which the Government of the Russian Federation permits United to restore its authorized code-share services with Lufthansa.” Order 96-10-1 at 3.’

3. Since the Department made this special provision with respect to United’s seven U. S.-Russia frequencies it has confirmed this as Department policy; and, indeed has invited additional requests for waivers from its normal dormancy provisions in this market. See Order 97-7-33 (Conditions of May 20, 1997 Notice of Action Taken in Docket OST-96-1672) and Order 97- 1 1 - 19 (Special Remarks in September 18, 1997 Notice of Action Taken in Docket OST-96-1672). The code-share frequencies in this market have special value, which the Department has explicitly recognized. Their value results from the terms of the U.S.-Russia bilateral, which requires special frequency allocations for third-country code-share services, allowing two code-share flights for each frequency allocated. The special policy of the Department with respect to dormancy of a third-country code-share frequencies is a reaction to the refusal of the Russian government to allow U.S. carriers to make use of them.² These special

¹ Within days, United notified the Department that it “intends to use its U.S.-Russia frequencies allocated in . . . Order [96-10-1] on a year round basis to support code-share services with Lufthansa German Airlines at such time as the government of the Russian Federation allows United to resume such services.” Letter of October 11, 1996, Docket OST-96-1672. At that point, the refusal of the Russian government to renew approval of United’s service with Lufthansa had persisted for more than a year; unfortunately it has now continued for an additional two more years. United has been denied its right to code share to Moscow since March 31, 1995. See Order 96-8-48 at 2, n.3. See also Answers of United in Docket OST-98-3329 dated January 29, 1998 and June 15, 1998; Docket OST-98-4289 dated August 24, 1998; and Docket OST-95-733 dated March 9, 1998 and August 31, 1998. See also Order 98-2-3, in which the Department granted United’s complaint against the Russian Federation.

² American’s cavalier description of all non-operating U.S. carrier authority to Russia as dormant belies its own prior experience with proposed service to Russia, which should have given
(continued.. .)

circumstances distinguish this market from those referred to by American in its assertion of a “well-established” principle. The Department’s decision to favor direct carrier services over code-share arrangements in the Mexican market was made “because designations in U.S.-Mexico city pairs are limited,” Order 97-9-38 at 3. Limited city-pair designations are not the equivalent of limited-frequency international markets. The extrabilateral code-share arrangements approved in Orders 94-3-33 and 92-10-19, also cited by American, involved service between the U.S. and countries which at the time, in the first instance, had no provision in the bilateral covering code-share arrangements, and, in the second instance, had no bilateral at all in effect. American’s examples are, therefore, inapposite.

² (. . . continued)

it a deeper understanding of dormant authority in this market. American was awarded authority for the exact route it seeks here (Chicago-Moscow) by the Department in May of 1991 and given one year to start that service. The Department did not include the normal 90-day start-up period after the effective date (April 1, 1992) in American’s certificate, specifically allowing it to delay starting service until April 2, 1992 at the latest. Order 91-6-2. On February 27, 1992, American, citing “substantial political, social, and economic uncertainties” within the Russian Federation, asked for an additional 13 month extension, until May 1, 1993. The Department granted American’s request in part, extending its start-up date until November 1, 1992, Order 92-3-64. Then, on American’s Motion for Reconsideration, and over United’s objections, the Department extended the start-up date until May 1, 1993, Order 92-5-4 1, even though it recognized that this would allow American to hold onto this authority through “both the 1992 and 1993 peak seasons,” Order 92-3-64 at 3, and expressed concern that the route would not be used “until at least the 1994 travel season if American did not institute service as planned,” Order 92-5-41 at 2. In granting this extraordinary extension, the Department took American at its word that it would “publicly announce its new service, place it in SABRE and other media, and engage in reservations and sales activities long before May 1, 1993 . . . [i]ndeed . . . prior to January 1, 1993 .” Petition of American for Reconsideration of Order 92-3-64 (April 3, 1992). The Department conditioned its grant of the extension of the startup date until May 1, 1993 subject to a demonstration by American that substantial steps toward inauguration of the Chicago-Moscow service be completed prior to January 1, 1993. Order 92-5-41. Despite all the accommodations made for it, American notified the Department on July 3 1, 1992 that it had concluded that “it would not be a prudent business decision to undertake such service in the near term in light of political, economic, and security uncertainties in the Russian Federation.” One can only speculate what American’s assessment of its new Chicago-Moscow proposal is in light of today’s headlines.

4. For all of the foregoing reasons, United urges the Department, in the interest of persuading the Russian government to honor its bilateral obligations, to maintain its special policy with respect dormancy of frequency allocations in the U.S.-Russia market and to reaffirm that policy when considering this application of American.

Respectfully submitted,



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DATED: August 31, 1998

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.


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DATED: August 31, 1998

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