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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 -2

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

Undocketed

ANSWER OF UNITED AIR LINES, INC.

Communications with respect to this document should be sent to:

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**DATED: October 15, 1998**



on two separate occasions, disapproved it for the period beginning April 1995. This action is the subject of a complaint by United under the International Air Transportation Fair Competitive Practices Act (“IATFCPA”) in response to which DOT has found that the actions of the Russian government represent an “unjustifiable and discriminatory practice and an unjustifiable and unreasonable restriction of United’s access to the U.S.-Russia market...” Order 98-2-3 at 6.

United has also been allocated seven U.S.-Russia frequencies that it used to support its code-share service to Moscow prior to the unlawful actions of the Russian government in refusing to renew the authority. United’s frequencies were allocated by Order 96-10-1 subject to a 90-day dormancy condition which begins to run from the date on which Russia renews United’s code-share authority.

2. United takes no position on the applications of American and Finnair for exemption and a statement of authorization to code share to points other than St. Petersburg, Russia. Their applications must, however, be dismissed as to St. Petersburg because they have not requested an allocation of the frequencies needed under the U.S./Russia agreement to support their U.S.-Helsinki-St. Petersburg code-share service. Under the U.S./Russia agreement, a U.S. carrier requires ½ of a frequency for each code-share flight it offers on a third-country carrier to/from Russia. Annex 1, Section IV.E. American and Finnair have neither sought such a frequency allocation nor have they indicated in their application how many frequencies they need by showing the number of code-share flights per week they would offer between Helsinki and St. Petersburg.

American cannot be unaware of the need for a frequency allocation. In a recent order, the Department allocated American seven weekly frequencies to operate services between

Chicago and Moscow. Notice, dated September 18, 1998, in Docket OST-98-4328. American does not, however, indicate any intention to use those frequencies to support its code share on Finnair.<sup>1</sup>

Because the American/Finnair applications do not seek a frequency allocation to operate their code-share service to St. Petersburg, those applications should be dismissed to the extent they request authority to serve St. Petersburg. Such dismissal may be without prejudice to their being refiled with the request for an appropriate frequency allocation. Without knowing the extent of the frequency allocation that American may need for its code share to Russia with Finnair, United is not in a position at this time to answer their applications for authority to serve St. Petersburg under a code-share arrangement.’

4. In their Codeshare Agreement dated as of September 24, 1998, American and Finnair include the following Section 27.1:

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<sup>1</sup> The seven frequencies allocated to American in that proceeding were available for allocation as a result of the dormancy of a similar allocation made previously to Continental. Id. at 2. The Department’s September 18, 1998, Notice does not indicate what other unallocated frequencies may be available, if any. Although Annex 1 of the U.S./Russia Agreement, which requires frequency allocations, has expired, the allocation of frequencies to American in Docket OST OST-98-4238 demonstrates that both governments intend to continue to abide by its terms relating to frequencies. See also Order 98-2-3 at 5.

United reserves the right to object to the American/Finnair code-share applications on grounds other than frequency allocation should the carriers decide to refile. Authorization of additional third-country code shares by the U.S. will only serve to encourage the Russian government to believe that Russia, rather than the U.S., has the right to decide which U.S. carrier third-country code-share services will be allowed to operate. To the extent a choice must be made, it is the U.S., not Russia, that should exercise that choice. United’s code share with Lufthansa (as well as Delta’s with Austrian Airways) has been denied access to Russia on a discriminatory basis. The authorization of additional U.S. carrier third-country code shares such as the one proposed by American/Finnair will not contribute to a resolution of this issue but could, in fact, exacerbate U.S.-Russian aviation relations.

**27. RELATIONSHIP OF THE PARTIES**

- 27.1 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.

This exclusivity provision is similar to that which the Department's staff disallowed in the case of the code-share arrangement between United and All Nippon Airways. Statement of Authorization #98-38, August 7, 1998. United has requested review by the Department of the condition imposed by its staff on the United/ANA exclusivity arrangement. See Petition of United, dated August 17, 1998.

Unless the Department is prepared, to review its staffs conditioning of the United/ANA exclusivity clause, it cannot reasonably approve a code share between American and Finnair that is subject to a similar exclusivity arrangement. There are multiple carriers operating in the U.S.-Japan market and that market has more competition than is available between the U.S. and Finland. United's petition for review relating to the United/ANA code-

share is ripe for decision. The Department should take comparable action on Section 27.1 of American/Finnair Codeshare Agreement in light of its decision in the pending United/ANA case.

Respectfully submitted,



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**DATED: October 15, 1998**

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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 on the attached Service List by causing a copy to be sent via first-class mail, postage prepaid.

  
Brenda Gardner

**DATED:**      October **15, 1998**

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