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August 13, 2002

Ms. Dorothy Beard  
 Chief, Dockets Section  
 Department of Transportation  
 400 7th Street, S.W.  
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DEPT. OF TRANSPORTATION  
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**RE: Dockets OST-2001-8736 and OST-2002-13089**  
**Request of DHL Airways To Set Answer Date**

Dear Ms. Beard:

On August 7, 2002, Federal Express Corporation ("Federal Express") filed in docket OST-2001-8736 a pleading styled a "Petition for Reconsideration or Petition for Review of Staff Action." The filing, with 47 pages of Exhibits attached, purportedly seeks to have the Department "reconsider" or, if appropriate, "take review of staff action" and hold a hearing to resolve questions that Federal Express asserts ultimately relate to the citizenship of DHL Airways, Inc. ("Airways"). On August 9, 2002, United Parcel Service ("UPS") filed in docket OST-2002-13089 a pleading styled a "Petition To Institute a Public Inquiry" seeking similar relief.<sup>1</sup>

The Department's Rules of Practice neither authorize nor contemplate receipt of the Federal Express document: as a "Petition of Reconsideration" of the Department's May 2001 Order dismissing third-party complaints (Order 2001-5-11, May 11, 2001), the Petition is both untimely<sup>2</sup> and explicitly prohibited from being

<sup>1</sup> As noted infra, UPS does not oppose the Department's granting Airways until September 6, 2002, to file a substantive reply to its pleading. As such, Airways does not further discuss UPS's pleading herein, even though the filing is not authorized under the Rules of Practice.

<sup>2</sup> Rule 14(a)(2) requires that petitions for reconsideration be filed within twenty (20) days after service of such an order.

accepted for filing by the Department because it exceeds the page limitation specified in the regulations<sup>3</sup>; if intended to be a "Petition for Review of Staff Action" (the asserted staff action being the conclusion of the informal citizenship investigation with a finding that Airways continues to be a citizen of the United States within the meaning of the statute and regulations), the Petition is, again, both untimely and in violation of the explicit limitation in the Rules on the length of such petitions.<sup>4</sup>

In addition to Federal Express's complete disregard for the Department's clear and well-established procedural rules, the Federal Express document is replete with misstatements of fact and law, as well as innuendo that cast aspersions not only on Airways, but also the Department. By scouring all available sources, Federal Express has attempted to jerry-rig a "case" against Airways and, by extension, the Department.

Under the Department's rules, Airways would be required to respond to a Petition for Reconsideration within ten (10) days (Rule 14(a)(2)) or to a Petition for Review of Staff Action within seven (7) days (14 CFR 385.31(e)). As noted, the Federal Express document is neither of these. As a procedural matter, Airways would be entirely justified in filing, and the Department obligated to grant, a motion to strike Federal Express's pleading as unauthorized and filed in clear violation of the Rules or Practice.

As Federal Express well knows, however, Airways cannot allow to stand unchallenged the litany of misstatements, unsubstantiated allegations and outright distortions that Federal Express is using in its campaign to undermine the Department's decision to review Airways' restructuring in an informal proceeding. Airways, therefore, intends to file a substantive response to the Federal Express pleading. Fundamental fairness and due process of law require that Airways be afforded adequate time to prepare its response to Federal Express's trumped-up charges. Airways therefore requests that the Department establish September 6, 2002, or four days after the end-of summer Labor Day holiday, as the due date for filing such response. Airways considers this to be a reasonable request, given the unauthorized and voluminous nature of the Federal Express pleading and the fact

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<sup>3</sup> Rule 14(b) states that petitions for reconsideration that exceed twenty-five (25) pages in length (including appendices) "*shall not be accepted for filing by Department of Transportation Dockets.*" (emphasis supplied)

<sup>4</sup> 14 CFR 385.31(a) requires a filing of petitions for review within seven (7) days while 385.31(b) provides that "petitions shall not exceed 10 pages in length."

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that such response will have to be prepared during the peak of the summer vacation season.<sup>5</sup>

Accordingly, in the event that the Department does not decide sua sponte to reject Federal Express's unauthorized filing, Airways respectfully requests that the Department establish September 6, 2002 as the date for filing answers to such document, as well as the date for responding to UPS's petition in docket OST-2002-13089.

Respectfully submitted,



Stephen H. Lachter  
LACHTER & CLEMENTS LLP

COUNSEL FOR DHL AIRWAYS, INC.

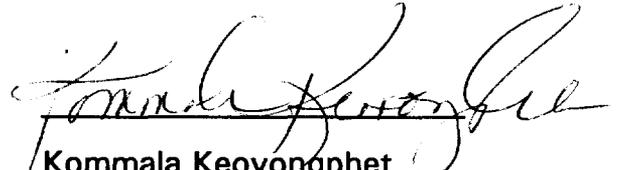
CC: All Parties on Attached Service List

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<sup>5</sup> Counsel for Airways has communicate by telephone with counsel for Federal Express to secure the latter's agreement on a response date. Counsel for Federal Express, however, has failed to confirm whether Federal Express would agree to our September 6<sup>th</sup> request. As noted above, counsel for UPS's has indicated that UPS does not oppose that request.

## CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Letter this 13th day of August, 2002 by first class mail, postage prepaid to all persons on the attached Service List.



Kommala Keovongphet

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