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

DEPT. OF TRANSPORTATION
DOCKETS
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Joint Application of)
MALAYSIA AIRLINES)
And)
NORTHWEST AIRLINES, INC.)
Under 49 U.S.C. §§ 41308 and 41309 for)
approval of, and antitrust immunity for,)
alliance agreement)
_____)

Docket OST-2000-6791 - 5

DATED: APRIL 14, 2000

**MOTION OF NORTHWEST AIRLINES, INC. FOR
CONFIDENTIAL TREATMENT UNDER 14 C. F. R. § 302.12**

Northwest Airlines, Inc. ("Northwest"), pursuant to 14 C.F.R. § 302.12 of the Department's Rules of Practice, requests that the Department withhold **from** public disclosure the confidential, proprietary and commercially sensitive information Northwest is filing concurrently under seal in the above-captioned proceeding. Northwest is submitting these confidential documents to facilitate the Department's processing of the joint application of Malaysia Airlines and Northwest Airlines Inc. for approval of and antitrust immunity for their alliance agreements filed herewith. In support of this request, Northwest submits the following:

- I. **NORTHWEST'S CONFIDENTIAL DOCUMENTS ARE PROTECTED FROM PUBLIC DISCLOSURE BY THE FREEDOM OF INFORMATION ACT.**

The confidential documents Northwest is filing in conjunction with its joint application with Malaysia Airlines for antitrust immunity are protected from public disclosure under various

exemptions of the Freedom of Information Act ("FOIA"), including 5 U.S.C. § 552(b)(3) and 5 U.S.C. § 552(b)(4). Exemption (4) protects from public disclosure "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." FOIA exempts from disclosure information that is not of the type typically released to the public, where the release would cause substantial harm to the competitive position of the person submitting the information. *See, e.g., Gulf & Western Industries, Inc. v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1980); *National Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976); and *Joint Application of United and Lufthansa*, Order 93-12-32 (December 18, 1993).

These documents filed under seal qualify for exemption from public disclosure under the above-detailed standard. The documents relate to commercially sensitive and proprietary business, financial and corporate matters; they were obtained from a private citizen; and they are not of the type generally released to the public. Northwest would suffer substantial competitive harm if the documents were publicly disclosed. Because the documents are fully encompassed by this standard, and in order to fulfill a central purpose of the FOIA exemption -- to encourage private citizens to provide the government with information not typically made public -- protection of Northwest's documents is fully warranted here.'

The documents for which Northwest requests confidential treatment are listed in the attached index.

¹ Public disclosure of such information could impair the Government's ability to obtain necessary information in the future or cause substantial harm to the competitive position of the person from whom the information was obtained. *See, National Parks & Conservation Ass'n, supra*, at 770; *Burke Energy Corp. v. DOE*, 583 F. Supp. 507, 510 (D. Kansas 1984).

II. ACCESS TO NORTHWEST'S CONFIDENTIAL AND PROPRIETARY DOCUMENTS SHOULD BE LIMITED TO COUNSEL AND OUTSIDE EXPERTS.

Due to the nature of the documents Northwest has filed, access to the documents pursuant to 14 C.F.R. § 302.12 should be limited to counsel and outside experts that file an affidavit stating that they will (1) use the information only for the purpose of participating in this proceeding; and (2) not disclose the information to anyone other than counsel or outside experts who have filed a valid affidavit with the Department.

The documents Northwest has filed under 14 C.F.R. § 302.12 contain highly sensitive commercial information relating to international strategy, performance and planning. In order to protect Northwest's ability to compete effectively in international markets, it is imperative that this information not be disseminated to Northwest's competitors, even under the procedures outlined in 14 C.F.R. § 302.12. In recent years, the Department has routinely limited access to such data filed under Rule 39 (the predecessor to 14 C.F.R. § 302.12) in the course of antitrust proceedings to counsel and outside experts. See, e.g., Joint Application of Alitalia-Linee Aeree Italiane-S.p.A., KLM Royal Dutch Airlines and Northwest Airlines, Inc. (Docket OST-1999-5674), Scheduling Notice and Initial Determination on Motion for Confidential Treatment Under 14 C.F.R. 302.39 (July 19, 1999); and Joint Application of United Air Lines, Inc. and Air Canada (Docket OST-96-1434), Notice Granting Access to Documents (July 11, 1997). By limiting access in this manner, the Department can both permit parties to fully participate and deter the competitive harm that would result if the information were disseminated among

Northwest's competitors.

WHEREFORE, for the foregoing reasons, the Department should grant Northwest's motion to withhold from public disclosure the confidential, proprietary and commercially sensitive information that Northwest has filed under seal; limit access under 14 C.F.R. § 302.12 to counsel and outside experts as described above; and grant such other and further relief as the Department deems necessary.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2000, a copy of the foregoing Motion of Northwest Airlines was served by first class mail, postage prepaid, on the following:

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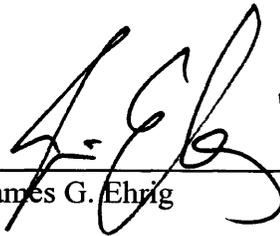
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