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

DEPT. OF TRANSPORTATION
DOCKETS

2003 FEB 26 P 4: 34

Joint Application of)
)
UNITED AIR LINES, INC.)
 and)
ASIANA AIRLINES, INC.)
)
 under 49 U.S.C. §§ 41308 and 41309 for approval of and)
 antitrust immunity for an Alliance Expansion Agreement)

Docket OST-03-14202-6

**MOTION OF UNITED AIR LINES, INC.
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

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DATED: February 26, 2003

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Joint Application of))
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February 26, 2003

**MOTION OF UNITED AIR LINES, INC.
FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12**

United Air Lines, Inc. (“United”), pursuant to Rule 12 of the Department’s Rules of Practice (14 C.F.R. § 302.12), respectfully requests that the Department withhold from public disclosure the documents that United is filing herewith under seal in the above-captioned proceeding. These documents contain confidential, proprietary and commercially sensitive information. United is submitting these documents to facilitate the Department’s processing of the Joint Application of United and Asiana Airlines, Inc. (“Asiana”) (collectively, the “Joint Applicants”) for approval of and antitrust immunity for an Alliance Expansion Agreement filed on January 3, 2003, in this docket. In support of this request, United submits the following:

**I. UNITED’S CONFIDENTIAL DOCUMENTS ARE PROTECTED
FROM PUBLIC DISCLOSURE BY THE FREEDOM OF
INFORMATION ACT**

At the Department’s request and in order to facilitate expeditious processing of the Joint Application, United is submitting an unredacted copy of page 4 of the

United/Asiana Code Share and Regulatory Cooperation Agreement and an unredacted copy of page 1 and partially unredacted copies of pages 7 and 9 of the United/Asiana International Passenger Prorate Agreement.¹ Redacted copies of these agreements were attached to the Joint Application as Exhibits JA-3 and JA-4. The specified pages of the agreements, produced by United in consultation with counsel, are confidential and proprietary.

United's documents are protected from public disclosure under various exemptions to the Freedom of Information Act ("FOIA"), including 5 U.S.C. §§ 552(b)(3) and (b)(4). Exemption 3 protects from disclosure information specifically protected by another federal statute, including 49 U.S.C. § 40115. See British Airports Authority v. CAB, 531 F.Supp. 408, 414 (D.D.C. 1982). Section 40115 states that the Department "shall" withhold from public disclosure, among other things, information that would adversely affect an air carrier's competitive position in foreign air transportation. The documents at issue here clearly satisfy this standard. They contain extremely sensitive information, including the terms of United's contractual arrangements with Asiana. These documents have not been made publicly available. If disclosed, this information could be used by United's competitors to their strategic advantage, and United's disadvantage, in making competitive decisions.²

¹ Asiana has agreed to submission of these pages of the agreements, subject to Rule 12 protection.

² The Department has found that Exemption 3 also applies to information protected by 49 U.S.C. § 46311. See Order 2001-10-2, at 2-3. That statutory provision prohibits the release of information acquired by the Department "when inspecting the records of an air

Exemption 4 protects from public disclosure information that is “(1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential.” Gulf & Western Indus., Inc. v. United States, 615 F.2d 527, 529 (D.C. Cir. 1980) (citations omitted). The documents at issue here clearly satisfy this standard. All are commercial or financial in nature; they were obtained from a private citizen; and are privileged or confidential. United would suffer substantial competitive harm if the documents were publicly disclosed. See Washington Post Co. v. HHS, 690 F.2d 252, 268 (D.C. Cir. 1982) (defining the standard for whether a document is privileged or confidential). 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.” National Parks & Conservation Ass’n v. Kleppe, 547 F.2d 673, 677-78 (D.C. Cir. 1976) (quoting National Parks & Conservation Ass’n v. Morton, 498 F.2d 765-70 (D.C. Cir. 1974)); Burke Energy Corp. v. DOE, 583 F. Supp. 507, 510-11 (D. Kansas 1984).

II. ACCESS TO UNITED’S CONFIDENTIAL AND PROPRIETARY DOCUMENTS SHOULD BE LIMITED TO COUNSEL AND OUTSIDE EXPERTS

Due to the nature of the documents United has filed, Rule 12 access should be limited to counsel and outside experts who file an affidavit stating that they will: (1) use the information only for the purpose of participating in this proceeding; and (2) not

carrier” or information that “is withheld from disclosure under section 40115.” 49 U.S.C. § 46311(a).

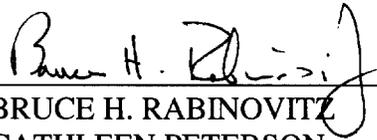
disclose the information to anyone other than counsel or outside experts who have filed a valid affidavit with the Department.

The documents United has filed under Rule 12 contain highly sensitive commercial information relating to the financial terms and conditions of its contractual arrangements with Asiana. In order to protect United's ability to compete effectively in international markets, it is imperative that this information not be disseminated to United's competitors, even under Rule 12 procedures. In recent years, the Department has routinely limited Rule 12 access to such data filed in the course of antitrust proceedings to counsel and outside experts.³ By limiting access in this manner, the Department can permit parties to fully participate in this proceeding while limiting the risk of competitive harm that would result if the information were disseminated to United's competitors.

³ See, e.g., Joint Application of American Airlines, Inc. and Swiss International Air Lines Ltd. (Docket OST-02-12688), Notice Providing Access to Documents (July 10, 2002); Joint Application of Delta Air Lines/Air France/Alitalia/Czech Airlines; (Docket OST-01-10429), Notice Providing Access to Documents (August 21, 2001); Joint Application of United/Austrian/Lauda/Lufthansa/SAS (Docket OST-00-7828), Notice Granting Access to Confidential Documents (September 15, 2000); Joint Application of American Airlines, Inc. and the TACA Group (Docket OST-00-7088), Notice Granting Access to Confidential Documents (April 7, 2000); 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).

WHEREFORE, for the foregoing reasons, the Department should grant United's motion to withhold from public disclosure the confidential, proprietary and commercially sensitive information that United has filed under seal; limit Rule 12 access to counsel and outside experts as described above; and grant such other and further relief as the Department deems necessary.

Respectfully submitted,



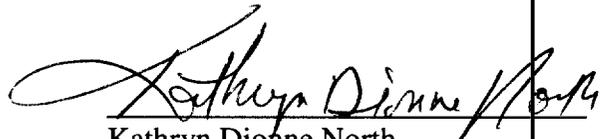
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Counsel for
UNITED AIR LINES, INC.

Dated: February 26, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a copy of the foregoing Motion of United Air Lines, Inc. for Confidential Treatment upon all persons listed on the attached Service List by causing a copy to be sent via first-class mail, postage prepaid.


Kathryn Dionne North

DATED: February 26, 2003

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