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

DEPT. OF TRANSPORTATION
DOCKETS

2003 MAR 28 P 1:52

In the Matter of the)
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CITIZENSHIP OF DHL AIRWAYS, INC.)
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Docket OST-2002-13089 - 42

**MOTION FOR LEAVE AND SURREPLY OF UNITED PARCEL SERVICE CO.
TO REPLY OF DHL AIRWAYS, INC.**

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Dated: March 28, 2003

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U.S. DEPARTMENT OF TRANSPORTATION
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In the Matter of the)	
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**MOTION FOR LEAVE AND SURREPLY OF UNITED PARCEL SERVICE CO.
TO REPLY OF DHL AIRWAYS, INC.**

United Parcel Service Co. ("UPS") hereby files the following Surreply to the *Reply of DHL Airways, Inc.* ("DHL") which opposes the release of certain materials supplied by DHL in connection with the Department of Transportation's (the "DOT" or the "Department") fitness and citizenship review of DHL.¹ In support of this Surreply, UPS states as follows:

1. UPS does not wish to review any of DHL's documents which are truly trade secrets or any documents, the release of which would cause competitive injury to DHL. Based upon the summary of the documents contained in the letter of the Inspector General, attached to the Department's March 5, 2003 Notice ("IG letter"), the documents submitted by DHL pertain to the subject of whether foreign interests, namely the Deutsche Post, have control over DHL. It appears that these documents pertain only to DHL's corporate structure—and its relationship to Deutsche Post and companies controlled by the Deutsche Post. To the extent these documents pertain to that subject, they should, and must, be made available to the public. To the extent that any documents are both related to the control issue and are competitively sensitive, the way to

¹ To the extent necessary, UPS hereby moves for leave to file this Surreply as an otherwise unauthorized document. The receipt of this Surreply will not unduly prejudice any party, and will advance the record in this proceeding. It would be in the public interest for the Department to have all relevant views before it in considering this matter.

proceed is for all parties wishing to view the documents to file confidentiality affidavits—a well established procedure at the Department.

2. Indeed, it is quite clear that for all intents and purposes DHL Airways has but a single customer—entities wholly-owned by the Deutsche Post. Thus, UPS can not imagine how any documents could cause competitive injury to DHL Airways. On the other hand, it is quite clear that the release of these documents could well prove that DHL Airways is beholden to, and thus under the control of, the Deutsche Post. Perhaps that is why DHL Airways does not want to see the release of these documents.

3. Reading *DHL's Reply*, one would come to the conclusion that the Department never conducts public, docketed, fitness or control proceedings which are on the record with the rights of full public participation. Nothing could be further from the truth. The Department routinely conducts fitness/citizenship/control proceedings in public on the record. Set forth below is a lengthy list illustrative of such proceedings.² There have been many more—most of

² Standard Airways, Inc., 43 C.A.B. 532, January 18, 1966; Saturn Airways, 68-8-16, August 5, 1968; Willye Peter Daetwyler d/b/a Interamerican Airfreight, 58 C.A.B. 118, October 28, 1971; Imperial International Airlines, 81-5-72, May 14, 1981; Premiere Airlines, 82-5-11, May 5, 1982; Trans-Panama, 82-9-62, July 27, 1982; Page Avjet Corporation, 83-7-5, July 1, 1983; Page Avjet Corporation, 84-8-12, August 2, 1984; Allegis Investors Group, 87-7-42, July 17, 1987; Transpacific Enterprises, Inc., 87-8-31, August 13, 1987; Intera Arctic Services, Inc., 87-8-43, August 18, 1987; Northwest Airlines, Inc., 89-9-51, September 29, 1989; Discovery Airways, Inc., 89-12-41, December 21, 1989; Discovery Airways, Inc., 90-1-60, January 29, 1990; Discovery Airways, Inc., 90-7-17, July 6, 1990; Northwest Airlines, Inc., 91-1-41, January 23, 1991; Challenge Air Cargo, Inc., 91-4-32, April 22, 1991; Hutchinson Auto & Air Trans. Co., Inc., 91-8-15, August 8, 1991; Hutchinson Auto & Air Trans. Co., Inc., 91-10-52, October 25, 1991; Executive Air Fleet, Inc., 92-9-46, September 27, 1992; Challenge Air Cargo, Inc., 93-7-25, July 15, 1993; Wrangler Aviation, Inc., 93-7-26, July 25, 1993; ATX, Inc., 94-4-8, April 5, 1994; Lone Star Airlines, 94-8-44, August 24, 1994; Lone Star Airlines, 94-9-5, September 7, 1994; Air-Evac Air Ambulance, Inc., 95-3-3, March 2, 1995; Wrangler Aviation, Inc., 95-7-31, July 25, 1995; Air-Evac Air Ambulance, Inc., 96-6-13, June 7, 1996; Air Transport International, 98-8-32, August 28, 1998; Wrangell Mountain Air, Inc., 99-3-13, March 18, 1999; Trans Borinquen Air, Inc., 2000-4-20, April 19, 2000; Trans Borinquen Air, Inc., 2000-5-9, May 10, 2000; Wrangell Mountain

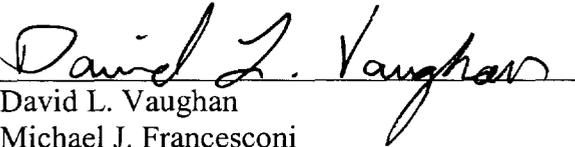
which have been far less complex and controversial than the instant matter. It is inexplicable why the Department has not acted similarly in this case. As the DOT Inspector General himself noted, private/*ex parte* procedures were not suitable for this case. The Department should make public DHL's filings or, to the extent it determines any of them to be confidential, utilize the well-established confidentiality affidavit procedure.

4. The report of the Office of the Inspector General began the process of lifting the veil on the relationship between the Deutsche Post and DHL Airways. It is time for the Department to finish the job, and permit a full public review to determine whether DHL Airways is controlled by non-U.S. citizens.

WHEREFORE, United Parcel Service Co. respectfully requests the Department of Transportation to release the documents filed by DHL Airways described above and institute a public docketed proceeding before an Administrative Law Judge. In addition, UPS requests such other and further relief as may be deemed just and necessary.

Air, Inc., 2000-5-11, May 10, 2000; Servicios Aereos Profesionales, Inc., 2000-7-15, July 11, 2000; Freedom Airlines, Inc., OST-01-11206-3, January 24, 2002; Sunrise Airlines, Inc., 2002-2-5, February 8, 2002.

Respectfully submitted,



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Date: March 28, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March 2003, a copy of the foregoing document was sent, via first-class mail, postage prepaid to the following:

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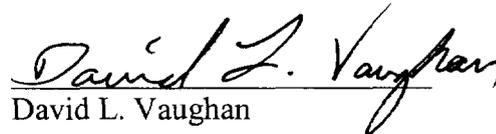
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