



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Served: May 12, 2003

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In the matter of the citizenship of

DHL AIRWAYS, INC.

Under 49 U.S.C. § 40102(a)(15)  
Docket OST-2002-13089

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**NOTICE ON REQUEST FOR EXTENSION OF TIME FOR  
SUBMISSION OF RECOMMENDED DECISION**

By Order 2003-4-14, issued April 17, 2003 (“Instituting Order”), the Department instituted a *de novo* review of the current citizenship of DHL Airways, Inc. (“DHL Airways”) before an Administrative Law Judge. We directed the Law Judge to submit a Recommended Decision (“RD”) to the Department by September 2, 2003. In so doing, we also stated that, if the Law Judge determined that additional time was needed to complete this proceeding, he could request an extension of time from the DOT Decisionmaker.

On April 29, 2003, Chief Administrative Law Judge Ronnie A. Yoder held a prehearing conference in this proceeding, and on May 2, issued his prehearing conference report (“Report”), which included a request to the Decisionmaker for an extension of time.

In his request, Judge Yoder indicated that DHL Airways proposed October 31 as the due date for the RD and that the other parties indicated a willingness to accept November 24, but later changed that to December 23 without further explanation. The Chief Judge requested November 24 as the date for submission of his RD. In support of his request, the Chief Judge notes that the issues in this proceeding have been before the Department for 2½ years. *See* Report at 3.

It is precisely because these issues have been before the Department for this length of time that we believe that there should be an expeditious resolution of this matter. To make it possible to complete this proceeding by our September 2 deadline, the Department directed that all parties designate, in a filing in this docket within seven days of the issuance of the Instituting Order, the documents that should be included in the record in the proceedings before the Law Judge. Not one of the parties complied with this order in a timely manner. *See* Report at 3. We believed that this seven-day deadline was reasonable at the time we imposed it, and we continue to believe that it was a reasonable time frame, despite the fact that the parties disregarded it, and instead of complying with our direction, now seek additional time to expand this proceeding.

The Chief Judge further states that additional time is necessary because there has been no previous opportunity for discovery. *See* Report at 5 n.6. While we have directed the Chief Judge to conduct a *de novo* review of this matter, the issue involved in this proceeding has been the subject of multiple pleadings before the Department over the past 2½ years, by each of these parties. We recognize and acknowledge that some limited discovery may be justified. Under these circumstances, however, the process of discovery should take

considerably less time than it might have if this issue were new to the parties. That is particularly true because discovery should be limited only to facts relevant to the issue of the current citizenship of DHL Airways.

Lastly, the Chief Judge states that the “need for additional time is especially acute as the Instituting Order provides that Public Counsel will not participate in these proceedings.” *See* Report at 5. We see no reason why the participation of Public Counsel would have helped the parties to meet the deadlines set by the Instituting Order. Both sides of the questions at issue here are adequately, indeed amply, represented by competent counsel. We therefore see no reason to believe that the parties would require the intervention of Public Counsel to develop a full record on the issues in a timely way. It is an obligation of the parties who requested this proceeding to devote the resources necessary to proceed expeditiously and meet all deadlines with the same zeal that they have demonstrated in addressing the issue of whether we should institute an oral evidentiary hearing in the first place.

We believe that the original September 2 deadline afforded the Chief Judge and all parties an adequate amount of time to fully consider the important issues raised in this proceeding. We note that Federal Express Corp., United Parcel Service Co., and Lynden Air Cargo, LLC have expressed concerns in this docket about the impact of alleged “foreign” competition<sup>1</sup> and that DHL Airways has stated its concern about the impact on its business of the extensive time that this proceeding has been pending.<sup>2</sup> Nevertheless, we have decided to grant the request for an extension in part and believe that a deadline of October 31 would adequately serve the public interest. For the reasons stated above, we regard an extension of almost two months, to October 31, as more than sufficient. A further extension would unreasonably extend a proceeding that, in the public interest, should be brought to closure without undue delay. Moreover, we see no reasons why this case cannot be completed on time if the Instituting Order is complied with by all parties and rigorously enforced by the Chief Judge.

**ACCORDINGLY**, We extend the deadline to submit a Recommended Decision to the Department to October 31, 2003. No further extensions will be granted unless warranted by extraordinary circumstances.

We will serve a copy of this notice on each of the parties in this proceeding as set forth in the attached Service List.

Dated at Washington, DC, May 12, 2003:

**READ C. VAN DE WATER**  
**Assistant Secretary for Aviation**  
**and International Affairs**

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<sup>1</sup> *See, e.g.*, UPS Reply of September 17, 2002, Docket OST-2002-13089, at 12-13 (alleging Deutsche Post engages in “anti-competitive behavior” causing “unfair competition”); FedEx Reply of September 24, 2002, Docket OST-2002-13089, at 3 (“The Department is required to ensure that U.S. air carriers compete on an equal footing with foreign air carriers. This responsibility has become even more important since last year’s tragic events.” (footnote omitted)); Lynden Air Cargo Motion of November 8, 2002, Docket OST-2002-13089, at 4 (stating loss of Air Mobility Command contract to DHL Airways “will have serious financial consequences for our company”).

<sup>2</sup> *See* Report at 4.

**SERVICE LIST  
DHL AIRWAYS, INC.**

**Docket OST-2002-13089**

The Honorable Ronnie A. Yoder  
Chief Administrative Law Judge  
Office of Hearing, M-20, Room 5411  
U.S. Department of Transportation  
Washington, DC 20590  
FAX: 202-366-7536

Robert Jeffrey Kelsey  
Federal Express Corporation  
3620 Hacks Cross Road  
Bldg. B, 2<sup>nd</sup> Floor  
Memphis, TN 38125  
FAX: 901-434-4523

Sanford M. Litvack  
Joanna R. Swomley  
Quinn, Emanuel, Urquhart, Oliver  
& Hedges, LLP  
Counsel for DHL Airways, Inc.  
805 Third Avenue  
New York, NY 10022  
FAX: 212-702-8146

Pierre Murphy  
Law Office of Pierre Murphy  
Counsel for Lynden Air Cargo, LLC  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036  
FAX: 202-776-3975

David L. Vaughan  
Kelley Drye & Warren LLP  
Counsel for United Parcel Service Co.  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036  
FAX: 202-955-9792

Patricia L. Thomas  
Chief, Air Carrier Fitness Division, X-56  
U.S. Department of Transportation  
Room 6401  
400 7<sup>th</sup> Street, SW  
Washington, DC 20590  
FAX: 202-366-7638