



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC

Issued by the Department of Transportation on May 11, 2004

**NOTICE OF ACTION TAKEN -- DOCKET OST-2004-17279**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

**Background**

By Order 2004-3-3 we instituted the *2004 Hong Kong Fifth-Freedom All-Cargo Frequency Proceeding* to select carriers to operate 18 fifth-freedom frequencies available for U.S. carrier services in the Hong Kong fifth-freedom market.<sup>1</sup> Four carriers (Federal Express (FedEx), Northwest Airlines (Northwest), Polar Air Cargo (Polar), and United Parcel Service (UPS)) filed initial applications on March 23, 2004. FedEx, Northwest, and Polar requested frequencies for services in the Hong Kong-Seoul market, and those requests exceeded the number available for service to that city.<sup>2</sup> UPS requested frequencies for Hong Kong service via Singapore to Macapagal.<sup>3</sup>

Joint Motion of **Federal Express Corporation, Northwest Airlines, and Polar Air Cargo** filed **4/2/04**, for:

**XX Allocation of Hong Kong Fifth-Freedom Cargo Frequencies and Suspension of Procedural Timetable:**<sup>4</sup>

The joint carriers propose to allocate the five remaining available Seoul frequencies among them as follows: 3 frequencies to FedEx, 1 frequency to Northwest, and 1 frequency to Polar. They state that the proposed distribution of frequencies will preserve the valuable resources of the  
**(See Reverse Side)**

<sup>1</sup> Sixteen of these frequencies become available under the MOU on October 26, 2004. Two frequencies were frequencies that remained available from an earlier proceeding. These frequencies were awarded one each to Northwest and Polar on a *pendente lite* basis for Seoul-Hong Kong services. See Order 2004-3-3, at 6.

<sup>2</sup> Certain cities have city-pair caps, and services via those cities are limited. The MOU only permits 12 weekly fifth-freedom frequencies in the Seoul-Hong Kong market. The Department has allocated 7 of those 12 frequencies on a permanent basis, and thus, only 5 frequencies are available for Seoul-Hong Kong services.

<sup>3</sup> On March 24 (and supplemented March 29) UPS filed a motion for immediate allocation of frequencies for the Singapore-Macapagal service and also for UPS' dismissal from the balance of the proceeding. In its motion, it also withdrew the backup authority requested for Seoul that had been in its original application. There was no objection to the UPS request. Thus, on March 31, 2004, the Department allocated UPS 6 Hong Kong frequencies for its proposed Hong Kong-Singapore-Macapagal service and also dismissed UPS from the balance of the *2004 Hong Kong Fifth-Freedom All-Cargo Frequency Proceeding*.

<sup>4</sup> In view of the circumstances presented and pending our resolution of the joint motion for allocation, by Notice dated April 6, 2004, the Department suspended the remaining procedural schedule established in Order 2004-3-3 until further notice. Answers to the motion regarding the allocation of frequencies for Seoul service were due April 13, 2004.

Department, will avoid any unnecessary and protracted proceeding, will promote competition in the Hong Kong all-cargo market, and will provide the Department with a mutually agreed upon proposal that will best serve the public interest.

We received no answers to the joint motion.

Applicant reps: Nancy S. Sparks (FedEx) 202 756-2461; Megan Rosia (Northwest) 202 842-3193; Kevin Montgomery (Polar) 202 828-1002 DOT Analyst: Linda Senese 202-366-2367

#### DISPOSITION

**XX Granted** (Allocation of Hong Kong-Seoul all-cargo frequencies: 3 to FedEx, 1 to Northwest, 1 to Polar, subject to conditions, see below)

The above action was effective when taken: May 11, 2004, and will remain in effect indefinitely, subject to conditions.<sup>5</sup>

**By: Susan McDermott**  
**Deputy Assistant Secretary for**  
**Aviation and International Affairs**

**XX The authority granted is consistent with the October 19, 2002, Memorandum of Understanding between the Government of the United States and the Government of the Hong Kong Special Administrative Region of the People's Republic of China and with the aviation agreement between the United States and the Republic of Korea.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX Holders' certificates of public convenience and necessity**

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**Conditions:** Consistent with our standard practice, the frequency allocation granted is subject to the condition that if any of the frequencies are not used for a period of 90 days, the allocation as to each of those frequencies will expire automatically and the frequencies will revert to the Department for reallocation. The 90-day dormancy period for Northwest and Polar will begin immediately, and the 90-day dormancy period for FedEx will begin on October 26, 2004.

**Remarks:** The Department's instituting order in the *2004 Hong Kong Fifth-Freedom All-Cargo Frequency Proceeding* called for applications on March 23, 2004, and made no provision for supplemental applications. While we view the joint motion filed by FedEx, Northwest, and Polar as a supplement to their originally filed applications, we will nevertheless entertain it in the public interest in the circumstances presented. This supplement modifies the three carriers' original requests so that FedEx now only seeks three Seoul frequencies; and Northwest and Polar

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<sup>5</sup> Northwest and Polar are currently operating one Seoul-Hong Kong frequency each by virtue of *pendente lite* exemption authority. (see Order 2004-3-3 and note 1, *supra*.) By this action we are awarding them the two long-term frequencies (one to each) that had been awarded to another carrier in a previous proceeding but that subsequently reverted to the Department. These frequencies are available for immediate use. Our action here terminates the *pendente lite* awards to Northwest and Polar but in no way alters their ability to continue these services. We are awarding FedEx three frequencies from the pool of frequencies that become available October 26, 2004.

only seek one frequency each for Seoul-Hong Kong service. We have reviewed the carriers' joint request and find that grant of this request will provide public interest benefits and will provide U.S. carrier service with all of the Seoul-Hong Kong frequencies permitted under the MOU. It is our policy to seek to maximize use of valuable route rights, and we have determined that the allocations we are making here promise to promote that objective and will enhance the service options available to the shipping public. The three frequencies for FedEx will enable the carrier to use local traffic rights between Seoul and Hong Kong as part of its U.S.-Hong Kong services, as will the one frequency for Northwest and the one frequency for Polar. Thus, the carriers will enhance the diversity of service in the area. We note that no party has shown any reason why we should not grant the joint request of FedEx, Northwest, and Polar and award these carriers the Seoul frequencies they seek. In these circumstances, we will award these carriers frequencies for Hong Kong-Seoul service.<sup>6</sup> We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

*An electronic version of this document is available on the World Wide Web at:*  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)

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<sup>6</sup> We note that UPS filed an application in the above-captioned docket on April 15, 2004, for three frequencies to other points. We will act on the UPS application separately.