



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.¹ 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.² UPS requested frequencies for Hong Kong service via Singapore to Macapagal.³ On April 2, 2004, FedEx, Northwest, and Polar filed a joint motion regarding the allocation of frequencies in the Seoul-Hong Kong market and requested the suspension of the procedural timetable in the proceeding.⁴

Application of **United Parcel Service** filed **4/15/04** for:⁵

XX Allocation of three frequencies for weekly all-cargo Hong Kong fifth-freedom frequencies: UPS states that it will use two of the requested frequencies in the Hong Kong-Bangkok market and one in the Hong Kong-Singapore market beginning in October 2004. UPS states that there are sufficient frequencies to meet this request, noting that of the 18 available in
(See Reverse Side)

¹ 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.

² 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.

³ 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*.

⁴ On April 6, 2004, the Department suspended the remaining procedural schedule established in the instituting order until further notice. We are contemporaneously acting on the joint motion of FedEx, Northwest, and Polar, regarding the allocation of Hong Kong-Seoul frequencies.

⁵ On April 19, 2004, the Department shortened the answer period for comments on the subject application to April 23, 2004. On April 23, 2004, FedEx filed a motion for an extension of time in which to file comments. By Notice dated April 27, 2004, the Department extended the answer period and reinstated April 30, 2004 as the answer period to the subject application.

the above-referenced proceeding six have been allocated to UPS for Singapore-Macapagal service and five have been requested by the other applicants in the proceeding for Seoul-Hong Kong service. Thus, seven frequencies will be unallocated if those requests are granted.

Northwest and Polar filed a joint answer, and FedEx filed a separate answer.⁶

All three carriers urge the Department not to allow the application of UPS to slow down action on the unopposed joint motion of FedEx, Northwest, and Polar for Hong Kong-Seoul frequencies, and all three maintain that the UPS application is untimely, given that in March UPS had requested and was granted dismissal from the balance of the proceeding. Northwest and Polar argue that if the Department decides to reach the merits of the UPS application, it should do so in a separate proceeding. FedEx argues that the UPS application is not eligible for contemporaneous consideration because it was filed after the Department's filing deadline, and FedEx also argues that the application is not mutually exclusive.

Applicant rep: **David Vaughan 202-955-9864** DOT Analyst: **Linda Senese 202-366-2367**

DISPOSITION

XX Granted (Allocation of 3 frequencies: 2 for Bangkok-Hong Kong all-cargo service and 1 for Singapore-Hong Kong all-cargo service, subject to conditions, see below)

XX Termination, *sua sponte*, of the 2004 Hong Kong Fifth-Freedom All-Cargo Service Proceeding (see Remarks below).

The above action was effective when taken: May 11, 2004. The allocation of frequencies will remain in effect indefinitely, subject to conditions. Under the terms of the October 19, 2002, U.S.-Hong Kong MOU, these frequencies become available for use on October 26, 2004.

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, with the aviation agreement between the United States and the Kingdom of Thailand, and with the Multilateral Agreement on the Liberalization of International Air Transportation (Singapore).

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

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 will begin on October 26, 2004.

⁶ On May 3, UPS advised the Department's staff that it was not going to file a reply to the answers.

Remarks: The Department's instituting order in the *2004 Hong Kong Fifth-Freedom All-Cargo Proceeding* called for applications on March 23, 2004, and made no provision for supplemental applications. While UPS requested and was granted on March 31, 2004, dismissal from the balance of the proceeding, we will accept its application as a supplement to its previous application (as amended by its motion for immediate action subsequently granted on March 31, 2004), and will entertain it in the public interest in the circumstances presented.⁷ This supplement seeks allocation for frequencies for services to points sought by no other party (*i.e.*, two frequencies for Hong Kong-Bangkok service and one frequency for Singapore service). We have reviewed the carrier's request and find that grant of this request will provide public interest benefits. It is our policy to seek to maximize use of valuable route rights. In these circumstances, we will award UPS the frequencies it seeks for Bangkok-Hong Kong and Singapore-Hong Kong service. We note that with this action there are no other frequencies available at Singapore. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Since by this action, and our contemporaneous action on the joint motion of FedEx, Northwest, and Polar, we will have granted all matters before us in this proceeding, we will also, *sua sponte*, terminate the *2004 Hong Kong Fifth-Freedom All-Cargo Service Proceeding*.⁸

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp

⁷ UPS should properly have sought reinstatement into the proceeding and should have filed a motion for leave to file an otherwise unauthorized document. Taking into account all the elements of record, including the absence of substantive opposition to the UPS request and our ability to process this matter without delaying our action on the pending joint motion of FedEx, Northwest, and Polar, we will not withhold action over a non-prejudicial procedural infirmity.

⁸ While after this action four frequencies will remain available for fifth-freedom all-cargo services in the Hong Kong market, any requests for authority to use such frequencies will be considered separately and should be filed in new dockets.