

**AVIATION**

**Transport Services**

**Agreement Between the  
UNITED STATES OF AMERICA  
and JAPAN**

Relating to and Amending  
the Agreement of August 11, 1952,  
as Amended

Effected by Exchange of Notes  
Signed at Washington April 20, 1998

with

Memorandum of Understanding



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966  
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

## **JAPAN**

### **Aviation: Transport Services**

*Agreement relating to and amending the agreement  
of August 11, 1952, as amended.*

*Effected by exchange of notes*

*Signed at Washington April 20, 1998;*

*Entered into force April 20, 1998.*

*With memorandum of understanding.*

書簡をもって啓上いたします。本使は、千九百五十二年八月十一日に東京で署名された日本国とアメリカ合衆国との間の民間航空運送協定（修正を含む。）（以下「千九百五十二年の協定」という。）に関する最近の協議に言及する光栄を有します。本使は、更に、千九百五十二年の協定を日本国と合衆国との間の航空関係にとって適切な形態で実施することを確保するために交渉され、ここに添付されている千九百九十八年三月十四日にワシントンで署名された了解覚書に含まれている規定が実施されること及び当該了解覚書に従って路線について協定の付表が修正されることを日本国政府に代わって提案する光栄を有します。

本使は、前記の提案がアメリカ合衆国政府にとって受諾し得るものであるときは、この書簡（添付された了解覚書を含む。）及び閣下の返簡が日本国政府とアメリカ合衆国政府との間の合意を構成し並びにその合意が閣下の返簡の日付の日に効力を生ずることを提案いたします。

本使は、以上を申し進めるに際し、ここに重ねて閣下に向かって敬意を表します。

EMBASSY OF JAPAN  
WASHINGTON, D. C.

千九百九十八年四月二十日ワシントンで

アメリカ合衆国駐在日本国特命全權大使

斎藤 邦彦

アメリカ合衆国國務長官 マデレーン・K・オルブライト閣下

Translation

Washington, April 20, 1998

Excellency:

I have the honor to refer to the recent consultations on the Civil Air Transport Agreement between Japan and the United States of America signed at Tokyo, on August 11, 1952, as amended (hereinafter referred to as the "1952 Agreement"). I have further the honor to propose, on behalf of the Government of Japan, that the provisions contained in the Memorandum of Understanding signed in Washington, on March 14, 1998, attached hereto, which were negotiated with a view to ensuring the implementation of the 1952 Agreement in a manner appropriate to the Japan-U.S. aviation relationship, shall be implemented and that, with respect to routes, the Schedule to the Agreement be modified accordingly.

If the above proposal is acceptable to the Government of the United States of America, I have the honor to propose that this Note with its attachment and Your Excellency's Note in reply shall constitute an agreement between the Government of Japan and the Government of the United States of America which will enter into force on the date of Your Excellency's reply.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Kunihiko Saito  
Ambassador Extraordinary  
and Plenipotentiary of Japan  
to the United States of America

Her Excellency  
Madeleine K. Albright  
The Secretary of State  
of the United States of America

## MEMORANDUM OF UNDERSTANDING

The following provisions were negotiated with a view to ensuring the implementation of the bilateral Civil Air Transport Agreement signed at Tokyo on August 11, 1952 (hereinafter referred to as the "1952 Agreement") in a manner appropriate to the Japan-U.S. aviation relationship.

The provisions of this Memorandum of Understanding (hereinafter referred to as the "1998 MOU"), as incorporated into an agreement to be concluded between the Government of Japan and the Government of the United States of America by an exchange of diplomatic notes, will constitute either understandings relating to implementation of the 1952 Agreement, as amended, or amendments of the Schedule attached to the 1952 Agreement.

Before the entry into force of the agreement, the Ministry of Transport of Japan and the United States Department of Transportation intend to take necessary measures to implement the elements of this 1998 MOU, on the basis of comity and reciprocity.

The terms "Party" or "Parties," as used herein, refer to Japan, the United States of America (hereinafter the "United States" or "U.S."), or both, as appropriate.

### Part I. COMBINATION SERVICES

#### A. *INCUMBENT COMBINATION AIRLINES*

##### 1. Rights of Incumbents

Two (2) airlines designated by the United States (hereinafter referred to as the "U.S. incumbent combination airlines")<sup>1</sup> and two (2) airlines designated by Japan (hereinafter referred to as the "Japanese incumbent combination airlines")<sup>2</sup> (hereinafter collectively referred to as the "incumbent combination airlines") pursuant to the 1952 Agreement may operate combination services between any point or points behind the territory of the Party designating the airlines, any point or points in the territory of the Party designating the airlines, any intermediate point or points, any point or points in the territory of the other Party, and any point or points beyond the territory of the other Party, without any limitation on frequency or capacity, and with respect to traffic composition without limitation except on passenger fifth freedom operations as set out in subsection 2, below.

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<sup>1</sup> Subject to the right of the United States, provided for in the 1952 Agreement, to substitute airlines, the U.S. incumbent combination airlines shall be Northwest Airlines and United Airlines.

<sup>2</sup> Subject to the right of Japan, provided for in the 1952 Agreement, to substitute airlines, the Japanese incumbent combination airlines shall be Japan Airlines and All Nippon Airways.

## 2. Formulae

Passenger services of incumbent combination airlines on route segments between the territory of the other Party and third countries, either intermediate to or beyond the territory of the other Party, (hereinafter referred to as "fifth freedom operations") shall be subject to the applicable formulae below:

### (a) *Formulae Applicable to Fifth Freedom Operations of U.S. Airlines*

#### (i) U.S. Airline Operations to and from IATA Regions TC-1 (the Americas) and TC-3 (Asia)<sup>3</sup>

The formulae in both provision (a)(i)(1) and provision (a)(i)(2) apply to U.S. incumbent combination airlines' fifth freedom operations to and from IATA Regions TC-1 (the Americas) and TC-3 (Asia) (hereinafter referred to as "Asia/Americas"):

(1) The amount of fifth freedom passenger traffic transported by an airline between Japan and any third country points, either intermediate to or beyond Japan, in Asia/Americas measured in passenger-miles and aggregated on a system-wide basis over a six (6) month period,<sup>4</sup> does not exceed the amount of total third and fourth freedom passenger traffic transported by the airline in Asia/Americas measured and aggregated in a similar manner. The total third and fourth freedom traffic consists of the U.S.-Japan and the U.S.-third country passenger traffic transported in Asia/Americas by that airline. This relationship between fifth freedom traffic and the total third and fourth freedom traffic can be expressed as follows:

$$\text{Pax-miles (BC)} \leq \text{pax-miles (AB)} + \text{pax-miles (AC)};$$

and

(2) The amount of third and fourth freedom passenger traffic transported by the airline between the United States and any third country points, either intermediate to or beyond Japan in Asia/Americas, measured in passenger miles and aggregated on a system-wide basis over a six (6) month period, is not less than twenty-five (25) percent of the amount of fifth freedom passenger traffic transported by that airline between Japan and any third country points, either intermediate to or beyond Japan in Asia/Americas, similarly measured. This relationship

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<sup>3</sup> All IATA regions (TC-1: "the Americas," TC-2: "Europe/Africa," and TC-3: "Asia") shall be considered to be those in effect as of January 1, 1998, as described in the International Air Transport Association, *Passenger Tariff Coordinating Conferences Resolutions Manual--General Information*, issued July 1997.

<sup>4</sup> For purposes of all formulae, for newly inaugurated services the six (6) month period would commence after a reasonable start up period of no less than three (3) months after inauguration of services.

between the U.S.-third country third and fourth freedom traffic and fifth freedom traffic can be expressed as follows:

$$\text{Pax-miles (AC)} \geq 25\% \text{ pax-miles (BC)}$$

(ii) Definitions for U.S. Airline Operations to and from Asia/Americas

For purposes of the above formulae for U.S. airline fifth freedom operations to and from Asia/Americas:

- (1) BC represents the passenger traffic transported by a U.S. airline with an initial origin or ultimate destination in Japan (B) and an ultimate destination or initial origin in third countries intermediate to, or beyond, Japan (C);
- (2) AB represents the passenger traffic with an initial origin or ultimate destination in the United States (A) and an ultimate destination or initial origin in Japan (B); and
- (3) AC represents the passenger traffic transported on a flight to, from, or via Japan with an initial origin or ultimate destination in the United States (A) and an ultimate destination or initial origin in third countries intermediate to, or beyond, Japan (C).
- (4) Connecting passengers to and from the airline's homeland, on a flight of the same airline or of another airline of the same country, shall constitute third or fourth freedom traffic, not fifth freedom traffic.
- (5) A passenger traveling on an aircraft carrying the code of two or more airlines shall be counted as a passenger of the airline on whose code the passenger is ticketed.

(iii) U.S. Airline Fifth Freedom Operations to and from IATA Region TC-2 (Europe/Africa)

The following formula applies to fifth freedom operations of U.S. incumbent combination airlines to and from IATA Region TC-2 (hereinafter referred to as "Europe/Africa"):

The amount of fifth freedom passenger traffic, measured in passenger miles, aggregated on a route by route basis, transported by an airline over a six (6) month period on each specified route including a fifth freedom segment to and from Europe/Africa, does not exceed the amount of third and fourth freedom passenger traffic transported by that airline on that route over the same period, similarly measured. This relationship between the fifth freedom traffic and the third and fourth freedom traffic can be expressed as follows:

$$\text{Pax-miles (BC)} \leq \text{pax-miles (AC)}$$

(iv) Definitions for U.S. Airline Operations to and from Europe/Africa

For purposes of the above formulae for U.S. airline fifth freedom operations to and from Europe/Africa:

(1) BC represents the passenger traffic transported by a U.S. airline with an initial origin or ultimate destination in Japan (B) and an ultimate destination or initial origin in third countries intermediate to, or beyond, Japan (C).

(2) AC represents the passenger traffic transported on a flight to, from, or via Japan with an initial origin or ultimate destination in the United States (A) and an ultimate destination or initial origin in third countries intermediate to, or beyond, Japan (C).

(3) A passenger traveling on an aircraft carrying the code of two or more airlines shall be counted as a passenger of the airline on whose code the passenger is ticketed.

(b) *Formulae Applicable to Fifth Freedom Operations of Japanese Airlines*

(i) Japanese Airline Operations to and from IATA Regions TC-1 (the Americas) and TC-3 (Asia)

The formulae in both provision (b)(i)(1) and provision (b)(i)(2) apply to Japanese incumbent combination airlines' fifth freedom operations to and from Asia/Americas:

(1) The amount of fifth freedom passenger traffic transported by an airline between the United States and any third country points, either intermediate to or beyond the United States, in Asia/Americas measured in passenger miles and aggregated on a system-wide basis over a six (6) month period, does not exceed the amount of total third and fourth freedom passenger traffic transported by the airline in Asia/Americas measured and aggregated in a similar manner. The total third and fourth freedom traffic consists of the Japan-U.S. and the Japan-third country passenger traffic transported in Asia/Americas by that airline. This relationship between fifth freedom traffic and the total third and fourth freedom traffic can be expressed as follows:

$$\text{Pax-miles (BC)} \leq \text{pax-miles (AB)} + \text{pax-miles (AC)};$$

and

(2) The amount of third and fourth freedom passenger traffic transported by the airline between Japan and any third country points, either intermediate to or beyond the United States in Asia/Americas, measured in passenger miles and aggregated on a system-wide basis over a six (6) month period, is not less than twenty-five (25) percent of the amount of fifth freedom passenger traffic transported by that airline between the United States and any third country points, either intermediate to or beyond the United States in Asia/Americas, similarly

measured. This relationship between the Japan-third country third and fourth freedom traffic and fifth freedom traffic can be expressed as follows:

$$\text{Pax-miles (AC)} \geq 25\% \text{ pax-miles (BC)}$$

(ii) Definitions for Japanese Airline Operations to and from Asia/Americas

For purposes of the above formulae for Japanese airline fifth freedom operations to and from Asia/Americas:

(1) BC represents the passenger traffic transported by a Japanese airline with an initial origin or ultimate destination in the United States (B) and an ultimate destination or initial origin in third countries intermediate to, or beyond, the United States (C);

(2) AB represents the passenger traffic with an initial origin or ultimate destination in Japan (A) and an ultimate destination or initial origin in the United States (B); and

(3) AC represents the passenger traffic transported on a flight to, from, or via the United States with an initial origin or ultimate destination in Japan (A) and an ultimate destination or initial origin in third countries intermediate to or beyond the United States (C).

(4) Connecting passengers to and from the airline's homeland, on a flight of the same airline or of another airline of the same country, shall constitute third or fourth freedom traffic, not fifth freedom traffic.

(5) A passenger traveling on an aircraft carrying the code of two or more airlines shall be counted as a passenger of the airline on whose code the passenger is ticketed.

(iii) Japanese Airline Fifth Freedom Operations to and from Europe/Africa

The following formula applies to fifth freedom operations of Japanese incumbent combination airlines to and from Europe/Africa:

The amount of fifth freedom passenger traffic, measured in passenger miles, aggregated on a route by route basis, transported by an airline over a six (6) month period on each specified route including a fifth freedom segment to and from Europe/Africa, does not exceed the amount of third and fourth freedom passenger traffic transported by that airline on that route over the same period, similarly measured. This relationship between the fifth freedom traffic and the third and fourth freedom traffic can be expressed as follows:

$$\text{Pax-miles (BC)} \leq \text{pax-miles (AC)}$$

(iv) Definitions for Japanese Airline Operations to and from Europe/Africa

For purposes of the above formulae for Japanese airline fifth freedom operations to and from Europe/Africa:

(1) BC represents the passenger traffic transported by a Japanese airline with an initial origin or ultimate destination in the United States (B) and an ultimate destination or initial origin in third countries intermediate to, or beyond, the United States (C);

(2) AC represents the passenger traffic transported on a flight to, from, or via the United States with an initial origin or ultimate destination in Japan (A) and an ultimate destination or initial origin in third countries intermediate to, or beyond, the United States (C).

(3) A passenger traveling on an aircraft carrying the code of two or more airlines shall be counted as a passenger of the airline on whose code the passenger is ticketed.

*B. NON-INCUMBENT COMBINATION AIRLINES*

1. Designations

(a) Each Party may designate, pursuant to the 1952 Agreement, up to four (4) airlines, including any airlines, other than incumbent combination airlines, designated under the 1952 Agreement and all agreements and understandings related thereto (hereinafter referred to as the "prior agreements"), to operate combination services as non-incumbent combination airlines (hereinafter referred to as the "non-incumbent combination airlines").<sup>5</sup>

(b) Effective January 1, 2000, each Party may designate a fifth non-incumbent combination airline.

2. Non-Restricted Frequencies

Non-incumbent combination airlines of each Party, in the aggregate, may operate, in addition to frequencies authorized pursuant to the prior agreements, up to twenty-eight (28) weekly round-trip frequencies between any point or points in the territories of the Parties, regardless of any restrictions on designations or frequencies on those city-pair markets under the prior agreements.

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<sup>5</sup> Subject to the right of the Parties, provided for in the 1952 Agreement, to substitute airlines, pursuant to subsection 6, below, these airlines shall include, for the United States, the current non-incumbent combination airlines--Delta Airlines, American Airlines, and Continental Airlines/Continental Micronesia Airlines/Air Micronesia.

### 3. Restricted Frequencies

(a) Non-incumbent combination airlines of each Party, in the aggregate, may operate, in addition to the frequencies authorized pursuant to the prior agreements, up to forty-two (42) weekly round-trip frequencies between any point or points in the territories of the Parties, regardless of any restrictions on designations or frequencies on those city-pair markets under the prior agreements, except in the following city-pair markets:

Tokyo - New York\*  
Tokyo - Chicago  
Tokyo - San Francisco\*  
Tokyo - Los Angeles  
Tokyo - Honolulu  
Tokyo - Guam/Saipan  
Osaka - Los Angeles  
Osaka - Honolulu  
Osaka - Guam/Saipan  
Nagoya - Honolulu  
Fukuoka - Honolulu

\* For purposes of identifying restricted city-pair markets, Newark, New Jersey, shall be treated as a separate point from New York, New York; and Oakland, California, shall be treated as a separate point from San Francisco, California.

(b) With respect to city-pair markets listed in paragraph B 3(a), above, if (i) no airline of the other Party is serving a city-pair market, or (ii) if the level of service provided by the airlines of both Parties in the market falls to six (6) or fewer round-trip frequencies per week, in the aggregate, for a one (1) year period, aeronautical authorities of either Party may request consultations to determine whether there are public interest reasons for permitting such a city-pair to be served with restricted frequencies.

### 4. Reallocation of Frequencies

Each Party shall have the right to:

(a) Reallocate to any of its non-incumbent combination airlines any frequencies provided for in the prior agreements, except those provided for routes between Guam/Saipan and Japan,<sup>6</sup> that are allocated to that Party's incumbent combination airlines, including All Nippon Airways, as of January 1, 1998. Following such reallocation, these frequencies may be used for operations between any point or points in the territories of the Parties, regardless of any restrictions on designations or frequencies on those city-pair markets under the prior agreements, except in the city-pair markets restricted pursuant to subsection I B 3, above.

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<sup>6</sup> For Guam/Saipan-Japan routes, see subsection I B 7.

These frequencies shall be in addition to the frequencies provided for in subsections I B 2 and 3, above; and

(b) On sixty (60) days notice, reallocate the frequencies provided for in subsections I B 2, 3 and 4 for non-incumbent combination airlines among any of its non-incumbent combination airlines and to change the points selected for each frequency, subject to any point limitations applicable to such frequency in accordance with subsection 3, regardless of any restrictions on designations or frequencies on those city-pair markets under the prior agreements.

#### 5. Right to Switch Points

(a) Except with respect to Guam/Saipan-Japan routes, which are addressed in subsection I B 7, below, each Party shall have the right to select up to three (3) non-incumbent combination airlines, each of which shall, upon six (6) months notice to the aeronautical authorities of the other Party, be permitted to switch, on a one time, one city-pair basis, the point selected in its territory for frequencies provided for in the prior agreements and allocated as of January 1, 1998, to that airline, to any other point in its territory, regardless of any restrictions on designations or frequencies on those city-pair markets under the prior agreements. This right is subject to the limitation that if the city-pair market from which the switch will be made is not on the list of restricted city-pairs described in paragraph I B 3(a), then the frequency may not be switched to a city-pair market on that list.

(b) In lieu of one of the switches permitted under paragraph (a), above, the United States shall have the right to authorize its non-incumbent combination airline authorized as of January 1, 1998,<sup>7</sup> under paragraph II of the 1985 interim agreement, concluded May 1, 1985 (hereinafter referred to as the "1985 MOU") to serve Saipan-Tokyo as a coterminal with Guam-Tokyo, to operate up to seven (7) weekly round-trip frequencies on any city-pair, except the restricted city-pairs identified in paragraph I B 3(a), above, in addition to frequencies provided for elsewhere in this 1998 MOU or the prior agreements. If the airline switches from Saipan-Tokyo to another city-pair, pursuant to this paragraph, then: (i) that airline may not be selected, under subsection 7 (Guam/Saipan-Japan Routes) of this 1998 MOU, to operate the Saipan-Tokyo route; and (ii) the number of non-incumbent combination airlines to be selected by the Party under paragraph I B 7 (a), below, shall be reduced to one (1) for Saipan-Tokyo. The Party may reverse the switch and then re-authorize the same airline to serve Saipan-Tokyo with unlimited frequencies, as prior to the switch.<sup>8</sup>

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<sup>7</sup> The referenced airline is Continental Airlines/Continental Micronesia Airlines/Air Micronesia.

<sup>8</sup> Service by the referenced airline on the Guam-Tokyo city-pair shall not be affected by an exercise of rights under this paragraph (b).

6. Right to Substitute Airlines

Each Party may designate, on sixty (60) days notice, substitute airlines for any of its non-incumbent combination airlines, subject to the limitation that the total number of airlines designated at any one time shall not exceed the number of authorized designations, as described in subsection I B 1 (Designations), above.

7. Guam/Saipan - Japan Routes

The provisions of this subsection supersede any provision regarding Guam/Saipan-Japan routes contained in the prior agreements.

(a) Each Party may select two (2) non-incumbent combination airlines, including those non-incumbent combination airlines that were designated under the prior agreements, to operate on each of the following Guam/Saipan-Japan routes, without any limitation on frequencies or capacity.

Guam/Saipan-Tokyo  
Guam/Saipan-Osaka  
Guam/Saipan-Nagoya  
Guam/Saipan-Fukuoka  
Guam/Saipan-Naha

(b) In addition, each Party may select a non-incumbent combination airline or airlines, including the non-incumbent combination airline that was designated under the prior agreements, to operate services between Guam/Saipan and any two (2) points in Japan other than Tokyo, Osaka, Nagoya, Fukuoka and Naha, without any limitation on frequencies or capacity. Each Party may select one (1) non-incumbent combination airline to serve each of these two points. Each Party may select the points for its airlines and, upon sixty (60) days notice to the other Party, may change the selection.

(c) For each route listed in paragraph (a) of this subsection 7, in lieu of selecting two (2) non-incumbent combination airlines, each Party may select a non-incumbent combination airline to operate on a route between Guam/Saipan and a new point in Japan other than those permitted under paragraphs (a) and (b) of this subsection 7, without any limitation on frequencies or capacity. Each Party may select such new points in Japan for its airlines, subject to the following:

(i) A Party may not select a point in Japan that is being served to or from Guam/Saipan by an airline of the other Party that operated such route as of January 1, 1998, *provided that*, in the event such airline terminates services on that Guam/Saipan-Japan route for a six (6) month period, such route shall become eligible for service;

(ii) Once a Party selects a new point in Japan under this paragraph (c), the number of non-incumbent combination airlines of the Party permitted under paragraph (a) of this

subsection 7 on the route concerned shall become one (1), except that, on sixty (60) days notice, the Party may switch the selection back to the original Guam/Saipan-Japan route and the number of non-incumbent combination airlines to be selected on the route under paragraph (a) of this subsection 7 shall be restored to two (2); and

(iii) No more than a total of four new points in Japan may be served under this paragraph (c) at any time.

(d) The provisions of this subsection 7 shall not be construed to constrain any right of incumbent combination airlines under subsection I A 1 or that of non-incumbent combination airlines under subsections I B 2 and 3.

## Part II. ALL-CARGO SERVICES

Part I (All-Cargo Services) of the 1996 all-cargo agreement, concluded August 21, 1996 (hereinafter referred to as the "1996 MOU"), shall be amended to read as follows:

### A. *INCUMBENT ALL-CARGO AIRLINES*

#### 1. The Japanese Incumbent All-Cargo Airlines

Two (2) airlines designated by Japan (hereinafter referred to as the "Japanese incumbent all-cargo airlines")<sup>9</sup> pursuant to the 1952 Agreement may operate all-cargo services between any point or points behind Japan, any point or points in Japan, any intermediate point or points, any point or points in the United States, and any point or points beyond the United States, without any limitation on frequency, capacity, or traffic composition.<sup>10</sup>

#### 2. The U.S. Incumbent All-Cargo Airlines

Three (3) airlines designated by the United States (hereinafter referred to as the "U.S. incumbent all-cargo airlines")<sup>11</sup> pursuant to the 1952 Agreement may operate all-cargo services between any point or points behind the United States, any point or points in the

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<sup>9</sup> Subject to the right of Japan, provided for in the 1952 Agreement, to substitute airlines, the Japanese incumbent all-cargo airlines shall be Japan Airlines and Nippon Cargo Airlines.

<sup>10</sup> No formula will apply to Japanese incumbent all-cargo services.

<sup>11</sup> Subject to the right of the United States, provided for in the 1952 Agreement, to substitute airlines, the U.S. incumbent all-cargo airlines shall be Federal Express, Northwest Airlines, and United Airlines.

United States, any intermediate point or points, any point or points in Japan, and any point or points beyond Japan, without any limitation on frequency, capacity, or traffic composition.<sup>12</sup>

**B. NON-INCUMBENT ALL-CARGO AIRLINES**

**1. New Non-Incumbent All-Cargo Airlines Designated by Japan**

(a) Japan may designate one (1) airline other than incumbent all-cargo airlines to operate all-cargo services from any point or points in Japan.

(b) The airline designated under the preceding paragraph B 1 (a) may operate the frequencies that were available to Nippon Cargo Airlines under the 1985 MOU, the 1989 interim agreement, concluded December 27, 1989 (hereinafter referred to as the "1989 MOU") and the 1996 interim agreement concluded February 26, 1996 (hereinafter referred to as the "1995 ROC") on the routes including any of the four (4) points in the United States to which Nippon Cargo Airlines was authorized to operate under the 1985 MOU, the 1989 MOU, and the 1995 ROC with full coterminalization.<sup>13</sup>

(c) In addition to the four (4) points mentioned in paragraph (b), above, the airline designated pursuant to paragraph B 1(a), above, may operate all-cargo services to three (3) additional points in the United States. The three (3) additional points may be selected, or changed, on sixty (60) days notice by Japan to the United States.

(d) In addition to the frequencies referred to in paragraph B 1(b), above, the airline designated pursuant to paragraph B 1(a), above, may operate all-cargo services with eighteen (18) additional weekly frequencies. These eighteen (18) frequencies may be operated by the airline with full coterminalization to all seven (7) points in the United States mentioned in paragraphs B 1(b) and B 1(c), above.

(e) The airline designated under paragraph B 1(a), above, may operate beyond each of its authorized points in the United States to two (2) points beyond the United States, with full traffic rights between all points in the routes. Japan may select the same or different beyond points for each of the authorized points in the United States and may change the beyond points with sixty (60) days notice.

(f) In addition to the airline designated pursuant to paragraph B 1(a), above, Japan may designate one (1) airline (hereinafter referred to as the "new entrant"), other than incumbent all-

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<sup>12</sup> No formula will apply to U.S. incumbent all-cargo services.

<sup>13</sup> The referenced four (4) points in the United States to which Nippon Cargo Airlines was authorized to operate are Los Angeles, San Francisco, New York, and Chicago. Any frequencies operated by Nippon Cargo Airlines shall not be counted against frequencies provided for in the 1985 MOU, the 1989 MOU, or the 1995 ROC.

cargo airlines, to operate all-cargo services between any point or points in Japan and one (1) of the points in the United States to which the airline designated pursuant to paragraph B 1(a), above, may operate. The new entrant may use up to six (6) of any weekly frequencies available to, but not used by the airline designated pursuant to paragraph B 1(a), above. The point in the United States may be selected, or changed, on sixty (60) days notice by Japan to the United States.

(g) Operations of Japan Airlines and Nippon Cargo Airlines shall not be counted for purposes of Section III (Frequency Limitations) of the 1989 MOU.

2. Non-Incumbent All-Cargo Airlines Designated by the United States under the Prior Agreements

(a) The non-incumbent all-cargo airline designated by the United States under the 1989 MOU may operate eighteen (18) weekly all-cargo frequencies, in the aggregate, including the frequencies authorized for the airline under the 1989 MOU, between any point or points in the United States, any two (2) points in Japan, and beyond each point in Japan to and from any two (2) points, with full traffic rights between all points on the routes. Such airline may coterminimize all the points in Japan to which it may operate.

(b) These rights shall be subject to the limitation that no more than six (6) weekly frequencies may be operated on routings including Tokyo and no more than twelve (12) weekly frequencies on routings including Osaka.

(c) The United States may select the same or different beyond points for each of the two points selected in Japan. The points selected by the United States in Japan and the beyond points may be changed on sixty (60) days notice by the United States to Japan.

(d) The United States may designate<sup>14</sup> one (1) airline that was not operating scheduled combination or all-cargo services between the United States and Japan as of the date of the signature of the 1996 MOU to operate all-cargo services with six (6) weekly frequencies, in the aggregate, between any point or points in the United States, any two (2) points in Japan, and, from each point in Japan, any one (1) beyond point, with full traffic rights between all points on the routes. Such airline may coterminimize all the points in Japan to which it may operate. The United States may select the same or different beyond points for each of the two points selected in Japan and may change the points in Japan and the beyond points with sixty (60) days notice by the United States to Japan.

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<sup>14</sup> An airline designated under the 1996 MOU prior to this 1998 MOU need not be redesignated by the United States.

### 3. Additional All-Cargo Entrants for Japan and the United States

Effective January 1, 2002, each Party may designate one (1) airline, in addition to designations permitted elsewhere in this 1998 MOU or under the prior agreements, to operate as a non-incumbent all-cargo airline. Airlines designated under this provision may operate up to five (5) weekly frequencies between any point or points in the territory of the Party designating the airline, any one (1) point in the territory of the other Party, and any one (1) point beyond the territory of the other Party, without local traffic rights on the beyond sector, *provided that* Tokyo and Osaka and any U.S. point served by a Japanese all-cargo airline as of January 1, 1998, may not be served.<sup>15</sup> The Party designating the airline shall select, and may change on sixty (60) days notice, the point in the territory of the other Party and the beyond point.

### 4. Provisions Applicable to All-Cargo Airlines Designated by Japan and the United States

(a) For purposes of frequency limitations on all-cargo services under the 1985 MOU, the 1989 MOU, the 1995 ROC, and this 1996 MOU, as amended, any all-cargo flight from the territory of either Party to the territory of the other Party, and a return flight in the opposite direction, shall together constitute one frequency regardless of the number of traffic stops made in the territory of either Party or whether or not the flight operates beyond the territory of the other Party. If an airline does not operate a return flight, the flight in one direction shall still constitute one frequency.

(b) For purposes of all-cargo services to the beyond points referred to in paragraphs B 1(e) and B 2(a), above, the two beyond points may be served on a single flight or separate flights.

(c) Each Party may, on sixty (60) days notice, designate substitute airlines for any of the incumbent and non-incumbent all-cargo airlines.

## Part III. CHARTER SERVICES

The provisions in this Part (Charter Services) supersede the limitations on passenger and cargo charter operations between Japan and the United States contained in the prior agreements.

### A. *EQUALIZATION OF CHARTER FREQUENCIES*

Airlines of each Party, in the aggregate, may operate up to four hundred (400) one-way charter flights per year between any point or points in the United States and any point or points in Japan, subject to the limitation that no more than three hundred (300) one-way charter flights may be operated to or from Tokyo or Osaka in the aggregate, by the airlines of each Party.

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<sup>15</sup> The U.S. points served by an Japanese all-cargo airline as of January 1, 1998, are: Anchorage, Los Angeles, San Francisco, Chicago, New York, and Atlanta. For purposes of this Section, Newark, New Jersey, shall be treated as separate from New York, New York, and Oakland, California, shall be treated as a separate point from San Francisco, California.

Charter operations shall be subject to country-of-origin rules, except as provided in Section C, below.

*B. EXPANSION OF CHARTER OPPORTUNITIES*

1. Effective January 1, 2000, superseding Section III A, above, airlines of each Party, in the aggregate, may operate up to six hundred (600) one-way charter flights per year between any point or points in the United States and any point or points in Japan, subject to the limitation that no more than three hundred (300) one-way charter flights may be operated to or from Tokyo by the airlines of each Party. Charter operations shall be subject to country-of-origin rules, except as provided in Section C, below.

2. Effective January 1, 2002, superseding subsection III B 1, above, airlines of each Party, in the aggregate, may operate up to eight hundred (800) one-way charter flights per year between any point or points in the United States and any point or points in Japan, subject to the limitation that no more than three hundred (300) one-way charter flights may be operated to or from Tokyo by the airlines of each Party. Charter operations shall be subject to country-of-origin rules, except as provided in Section C, below.

*C. FREIGHT FORWARDER CHARTERS*

1. Airlines of the United States, in the aggregate, may operate each year up to one hundred and fifty (150) air freight forwarder charter units, originating in Japan and destined for the United States, subject to the limitation set forth in Section A, above. The following equivalencies will apply for purposes of counting units:

DC-8F or equivalent aircraft	1
DC-10 or L-1011	2
B747F	2.5

2. Effective January 1, 2000, superseding subparagraph 1, above, airlines of the United States, in the aggregate, may operate each year up to two hundred and twenty-five (225) air freight forwarder charter flights, without restriction as to aircraft type, originating in Japan and destined for the United States, subject to the limitation set forth in the applicable subsection of Section III B (Expansion of Charter Opportunities), above.

*D. LEASING ARRANGEMENTS*

Subject to country-of-origin rules and the requirements normally applied to such arrangements, charter airlines may engage in leasing arrangements with airlines performing scheduled or charter services.

**Part IV. COOPERATIVE MARKETING ARRANGEMENTS  
FOR COMBINATION AND ALL-CARGO SERVICES**

**A. OPERATION OF COOPERATIVE MARKETING ARRANGEMENTS -  
REQUIREMENTS FOR THE OPERATING AIRLINE**

In operating the authorized services on routes that include points in the territories of the Parties and also may include behind, intermediate, and beyond points, any designated airline of one Party may enter into cooperative marketing arrangements such as blocked-space, codeshare or leasing arrangements with:

1. An airline or airlines of the other Party;
2. An airline or airlines of the same Party, subject to the limitations in Section IV E (Limitations on Same Country Airline Codesharing), below;
3. An airline or airlines of a third country on segment(s) that do not involve traffic, carried under the code of the third country non-operating airline, destined to or originating in the territory of the other Party; *provided that* the third country gives assurances to the other Party that it will permit the airlines of the other Party to enter into codeshare arrangements with other airlines on authorized routes between the territories of the Parties and the third country;

- In conjunction with this right, if an airline of one Party seeks to enter into a codeshare arrangement with an airline of a third country on route segment(s) between the territories of the Parties and the third country; the other Party shall permit the airlines of that third country to codeshare with other airlines on route segment(s) between the territories of the Parties and the third country for which the airlines involved hold authority, *provided that* the third country gives assurances to the other Party that it will permit the airlines of the other Party to enter into codeshare arrangements with other airlines on any authorized route segment(s) between the territories of the Parties and the third country. Should the third country subsequently deny a request of the airlines of the other Party to enter into codeshare arrangements with other airlines on such routes, then the other Party shall have no obligation to approve codeshare services between the airlines of the first Party and the airlines of that third country;

4. An airline or airlines of a third country, except as provided in subsection IV A 5, below, on segment(s) that involve traffic, carried under the code of the third country non-operating airline, destined to or originating in the territory of the other Party; *provided that* such third country authorizes or allows comparable arrangements between the airlines of the other Party and other airlines on services to, from and via such third country;

5. An airline or airlines of a third country in the Americas, on segment(s) that involve traffic, carried under the code of the third country non-operating airline, destined to or originating in the territory of the other Party, only at the discretion of the aeronautical authorities of the Parties;

*provided that* all airlines in such arrangements (i) hold the appropriate authority, except as specifically provided in Section IV D, below, and (ii) meet the requirements normally applied to such arrangements. An airline authorized only for all-cargo services may not codeshare on combination services and an airline authorized only for combination services may not codeshare on all-cargo services.

***B. OPERATION OF COOPERATIVE MARKETING ARRANGEMENTS -  
REQUIREMENTS FOR THE NON-OPERATING AIRLINE***

On services on routes that include points in the territories of the Parties and also may include behind, intermediate, and beyond points, using aircraft operated by an airline or airlines described below, any designated airline of one Party may enter into cooperative marketing arrangements such as blocked-space, codeshare or leasing arrangements, with:

1. An airline or airlines of the other Party;
2. An airline or airlines of the same Party, subject to the limitations in Section IV E (Limitations on Same Country Airline Codesharing), below;
3. An airline or airlines of a third country, on segment(s) that do not involve traffic carried under the code of the non-operating airline of the Party destined to or originating in the territory of the other Party; *provided that* the third country gives assurances to the other Party that it will permit the airlines of the other Party to enter into codeshare arrangements with other airlines on authorized routes between the territories of the Parties and the third country;

- In conjunction with this right, if an airline of one Party seeks to enter into a codeshare arrangement with an airline of a third country on route segment(s) between the territories of the Parties and the third country; the other Party shall permit the airlines of that third country to codeshare with other airlines on route segment(s) between the territories of the Parties and the third country for which the airlines involved hold authority, *provided that* the third country gives assurances to the other Party that it will permit the airlines of the other Party to enter into codeshare arrangements with other airlines on any authorized route segment(s) between the territories of the Parties and the third country. Should the third country subsequently deny a request of the airlines of the other Party to enter into codeshare arrangements with other airlines on such routes, then the other Party shall have no obligation to approve codeshare services between the airlines of the first Party and the airlines of that third country;

4. An airline or airlines of a third country, except as provided in subsection IV B 5, below, on segment(s) that involve traffic, carried under the code of the non-operating airline of a Party, destined to or originating in the territory of the other Party; *provided that* such third country authorizes or allows comparable arrangements between the airlines of the other Party and other airlines on services to, from and via such third country;

5. An airline or airlines of a third country in the Americas, on segment(s) that involve traffic, carried under the code of the non-operating airline of the Party, destined to or originating

in the territory of the other Party, only at the discretion of the aeronautical authorities of the Parties;

*provided that* all airlines in such arrangements (i) hold the appropriate authority, except as specifically provided in Section D, below, and (ii) meet the requirements normally applied to such arrangements. For beyond and intermediate point services of the non-operating airline of the first Party, the codeshare services may be offered only on a blind sector basis. An airline authorized only for all-cargo services may not codeshare on combination services and an airline authorized only for combination services may not codeshare on all-cargo services.

### *C. COUNTING CAPACITY OR FREQUENCIES*

1. Where a non-incumbent airline of either Party operates, into the territory of the other Party, aircraft that is involved in codeshare operations under this Part IV (Cooperative Marketing Arrangements for Combination and All-Cargo Services), the frequencies of such operations shall be counted against any limitations on frequencies applicable under this 1998 MOU or the prior agreements to the operating airline.

2. Where a non-incumbent airline of either Party holds out its services on aircraft operated into the territory of the other Party by another airline under a codeshare arrangement under this Section, the frequencies of such operations shall not be counted against any limitation on frequencies applicable under this 1998 MOU or the prior agreements to the non-incumbent airline.

3. Without prejudice to the provisions of subsections A 4 and B 4 of this Part, any codeshare operations between an airline of a Party and an airline of a third country that involves traffic carried under the code of the airline of the third country, which is destined to or originating in the territory of the other Party, shall be subject to any applicable limitations on capacity or frequency contained in agreements between the other Party and the third country.

4. Any codeshare operations between an airline of a Party and an airline of a third country that do not involve traffic, carried under the code of the airline of the third country, which is destined to or originating in the territory of the other Party, shall not be subject to any limitation on capacity or frequency contained in agreements between the other Party and the third country.

### *D. CODESHARE ONLY AUTHORITY FOR NON-INCUMBENT COMBINATION AND NON-INCUMBENT ALL-CARGO AIRLINES TO HOLD OUT SERVICES UNDER CODESHARE ARRANGEMENTS ON ROUTES FOR WHICH THEY LACK OPERATING AUTHORITY*

Subject to the requirements in Section IV B, and the limitations in Section IV E (Limitations on Same Country Airline Codesharing), each Party may grant to its non-incumbent combination airlines and non-incumbent all-cargo airlines authority to place their code on services operated by airlines of either Party or by airlines of third countries, under codeshare

arrangements, between any point or points behind the territories of the Parties, any point or points in the territories of the Parties, and any point or points intermediate to and beyond the territories of the Parties, whether or not they hold authority to operate services on the routes, *provided that* for beyond and intermediate point services of non-incumbent combination and all-cargo airlines the codeshare service may be offered only on a blind sector basis.

*E. LIMITATIONS ON SAME COUNTRY AIRLINE CODESHARING*

Codesharing between airlines of the same Party shall be subject to the following limitations, except that codeshare operations involving airlines of the same Party that also involve an airline or airlines of the other Party shall not be subject to any restriction in this Section (Limitations on Same Country Airline Codesharing), and shall not be counted against any limitation in this Section.

1. Any designated airline may enter into codeshare arrangements with any other airline of the same Party on behind-gateway services in the territory of the Party without limitation.

2. No airlines of one Party may engage in codeshare arrangements in all-cargo services with other airlines of the same Party, except as provided for in subsection 1 of this Section.

Category A and Category B Airlines (for combination services)

3. Designated combination airlines of either Party not providing service between the mainland U.S. and Japan as of January 1, 1998, shall be considered, for the purpose of this Section, to be "Category A Airlines." Designated combination airlines that were providing service between the mainland U.S. and Japan as of January 1, 1998, shall be considered, for the purposes of this Section, to be "Category B Airlines."<sup>16</sup>

4. Category B Airlines may not enter into codeshare arrangements with other Category B Airlines of the same Party on gateway-to-gateway or beyond segments.

5. Category B Airlines may enter into codeshare arrangements with Category A Airlines of the same Party on gateway-to-gateway services operated by the Category A Airlines.

6. Category A Airlines may enter into codeshare arrangements with any designated airlines of the same Party on gateway-to-gateway services operated by the other designated airline, subject to the limitation that:

- In the case of city-pair markets listed in subsection I B 3 of this 1998 MOU, a Category A Airline may codeshare with an incumbent airline of the same country only up to the number of

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<sup>16</sup> For the United States, the Category B Airlines are United Airlines, Northwest Airlines, American Airlines, and Delta Airlines. For Japan, the Category B Airlines are Japan Airlines and All Nippon Airways.

weekly frequencies indicated for that incumbent airline in the Appendix attached hereto for the specific city-pair,<sup>17</sup> except that this right may not be implemented on a U.S.-Japan city-pair where both airlines were operating a service as of January 1, 1998.<sup>18</sup>

7. Airlines of each Party, in the aggregate, may operate twenty-eight (28) weekly round-trip frequencies under codeshare arrangements pursuant to subsections 5 and 6 of this Section.

8. The number of weekly round-trip frequencies specified in subsection 7 of this Section shall be increased if a Category A Airline of the other Party engages in codesharing on flights carrying the codes of two or more airlines of the first Party engaged in codeshare arrangements pursuant to subsections 5 or 6 of this Section. The number of such additional frequencies shall be equal to the number of weekly round-trip frequencies on which the Category A Airline of the other Party codeshares on such flights, on any gateway-to-gateway segment.

9. Notwithstanding the above provisions, same country codesharing services shall not be initiated on any gateway-to-gateway route segment(s) for a period of three (3) years after service has been inaugurated on that segment(s) by a Category A Airline of the other Party that does not have a codesharing relationship either with an airline of the other Party or an airline of the same Party.

10. Category A Airlines may enter into codeshare arrangements with incumbent combination airlines of the same Party on beyond services on a blind-sector basis. The number of frequencies operated under such codeshare arrangements shall be twenty-one (21) weekly round-trip frequencies, in the aggregate, for each Party. This number of frequencies shall be increased if a Category A Airline of the other Party enters into a codeshare arrangement with a designated airline of the first Party, by the number equal to the number of weekly round-trip frequencies on which the Category A Airline of the other Party codeshares with the designated airline of the first Party on any segment beyond the territory of either Party.

## **Part V. CHANGE OF GAUGE**

### ***A. FOR COMBINATION SERVICES***

1. For combination services, on any segment(s) of the authorized routes, any designated airline may perform international air transportation without any limitation as to change, in both the inbound and outbound directions, at any point on the route, in type or number of aircraft operated; *provided that:*

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<sup>17</sup> The Appendix attached hereto reflects weekly frequencies for the listed airlines, based on schedules for the 1997/1998 IATA winter season.

<sup>18</sup> The referenced city-pairs are identified from the information in the Appendix.

(a) In the outbound direction, transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point;

(b) For flights outbound from the homeland, onward transportation from the point of change of gauge in the territory of the other Party is performed by a single or multiple flights with (an) aircraft whose capacity in total is not greater than ten (10) percent more than that of the aircraft arriving at the change of gauge point; and

(c) For flights inbound to the homeland, transportation to the point of change of gauge in the territory of the other Party is performed by a single or multiple flights with (an) aircraft having the capacity in total not greater than ten (10) percent more than that of the aircraft performing onward transportation from the point of change of gauge.

2. Transportation performed on aircraft of other airlines under codeshare arrangements shall not be counted for purposes of this Section.

#### *B. FOR ALL-CARGO SERVICES*

1. For all-cargo services, on any segment(s) of the authorized routes, any designated airline may perform international air transportation without any limitation as to change, in both the inbound and outbound directions, at any point on the route, in type or number of aircraft operated; *provided that:*

(a) In the outbound direction, transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point; and

(b) For each flight outbound from the homeland, when a change of gauge takes place in the territory of the other Party, the onward transportation to a point or points in third countries may be performed by any number of aircraft as long as the aggregate capacity, measured in cubic footage, of those aircraft does not exceed the capacity of three 747-100 freighters.

2. Transportation performed on aircraft of other airlines under codeshare arrangements shall not be counted for purposes of this Section .

#### **Part VI. OPERATIONAL FLEXIBILITY**

With respect to all services described above, subject to the route or city-pair list restrictions under this 1998 MOU or the prior agreements, airlines designated by the Parties may, at their option:

A. Operate flights in either or both directions;

- B. Combine different flight numbers within one aircraft operation;
- C. Serve behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
- D. Omit stops at any point or points; and
- E. Transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this 1998 MOU; *provided that* the service serves a point in the territory of the Party designating the airline.

#### **Part VII. PRICING AND DISTRIBUTION**

1. There shall be a fair and equal opportunity for the airlines of both Parties to contract with wholesalers, travel agents, and other similar bodies, if any, for the sales of their air transportation services in accordance with laws and regulations of the Party where such a contract is concluded. Airlines of both Parties also shall be free to market their air transportation services directly to consumers, *inter alia*, by establishing their own sales channels to this end in accordance with laws and regulations of the Party where they market the service.

2. Experts of both Parties will meet by May 1, 1998, to consider steps to liberalize pricing, including zone pricing.

3. Until such time as a new agreement is reached on pricing, aeronautical authorities of each Party will flexibly approve air fares proposed by airlines. This would require, for example, at a minimum, approval of a proposed fare or rate of airlines of either Party that matches any competitive fare or rate which is permitted under the current regime.

#### **Part VIII. FUTURE NEGOTIATIONS**

A. Negotiations shall commence no later than January 1, 2001, with the objective of fully liberalizing the civil aviation relationship between Japan and the United States.

B. If no agreement is reached as a result of the above-referenced negotiations by January 1, 2002, then additional opportunities shall become available, as described in Part IX, below.

#### **Part IX. ADDITIONAL OPPORTUNITIES FOR COMBINATION SERVICES**

Frequencies provided for in this Part become available on the dates provided for in this Part or when non-incumbent combination airlines of either side are operating fifty-six (56) weekly round-trip frequencies authorized by this 1998 MOU, whichever is later; unless

otherwise provided in a new agreement between the Parties, as contemplated by Part VIII (Future Negotiations), that has entered into force or has otherwise been implemented by both Parties.

*A. NEW FREQUENCIES FOR NON-INCUMBENT COMBINATION AIRLINES*

1. Effective January 1, 2002:

(a) The aggregate number of non-restricted weekly round-trip frequencies, provided for in subsection I B 2 of this 1998 MOU, shall increase by seven (7);

(b) An additional fourteen (14) weekly round-trip frequencies, in the aggregate, may be operated by non-incumbent combination airlines of each Party on routes including any city-pair markets between the territories of the Parties other than Tokyo-New York, Tokyo-Chicago, or Tokyo-Honolulu.<sup>19</sup>

2. Effective January 1, 2004:

The aggregate number of non-restricted weekly round-trip frequencies, provided for in subsection I B 2 of this 1998 MOU, shall increase by an additional seven (7).

3. Effective January 1, 2005:

An additional seven (7) weekly round-trip frequencies, in the aggregate, may be operated by non-incumbent combination airlines of each Party on routes including any city-pair markets between the territories of the Parties other than Tokyo-New York, Tokyo-Chicago, or Tokyo-Honolulu.

4. Effective as of the first date All Nippon Airways operates a number of trans-Pacific weekly round-trip frequencies that exceeds by seventy (70) or more the number of such frequencies operated by that airline as of January 1, 1998,<sup>20</sup> the aggregate number of non-restricted weekly round-trip frequencies, provided for in subsection I B 2 of this 1998 MOU shall increase by an additional seven (7).

*B. CONVERSION OF THE FORTY-TWO (42) RESTRICTED FREQUENCIES FOR NON-INCUMBENT COMBINATION AIRLINES*

1. Effective January 1, 2002:

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<sup>19</sup> For purposes of city-pair restrictions contained in this Part, Newark, New Jersey, shall be treated as a separate point from New York, New York.

<sup>20</sup> As of January 1, 1998, All Nippon Airways operated eighteen (18) trans-Pacific weekly round-trip frequencies.

(a) Fourteen (14) of the forty-two (42) restricted frequencies, provided for in subsection I B 3 of this 1998 MOU, shall be converted to non-restricted frequencies, thereby increasing the aggregate number of non-restricted frequencies, provided for in subsection I B 2 of this 1998 MOU, by an additional fourteen (14);

(b) For seven (7) of the twenty-eight (28) remaining restricted frequencies provided for in paragraph I B 3(a) of this 1998 MOU, the restrictions shall be modified to permit operation of those frequencies by non-incumbent combination airlines of each Party on routes including any city-pair markets between the territories of the Parties other than Tokyo-New York, Tokyo-Chicago, or Tokyo-Honolulu.

2. Effective January 1, 2004:

For seven (7) of the twenty-one (21) remaining restricted frequencies provided for in subsection I B 3 of this 1998 MOU, the restrictions shall be modified to permit operation of those frequencies by non-incumbent combination airlines of each Party on routes including any city-pair markets between the territories of the Parties other than Tokyo-New York, Tokyo-Chicago, or Tokyo-Honolulu.

3. Effective January 1, 2005:

Seven (7) of the fourteen (14) remaining restricted frequencies, provided for in subsection I B 3 of this 1998 MOU, shall be converted to non-restricted frequencies, thereby increasing the aggregate number of non-restricted frequencies, provided for in subsection I B 2 of this 1998 MOU, by an additional seven (7).

**Part X. PROCEDURES CONCERNING THE APPLICATION OF  
ARTICLES 10, 11, AND 12 OF THE 1952 AGREEMENT  
WITH RESPECT TO CAPACITY, FREQUENCY, AND  
TRAFFIC COMPOSITION**

The following procedures concerning the application of Articles 10, 11, and 12 of the 1952 Agreement shall apply to all approvals and reviews of changes in capacity or frequency of services, including inaugurations of new services, for all services operated under this 1998 MOU or the prior agreements, and take precedence over the procedures prescribed in any of the prior agreements or agreed minutes implementing the 1952 Agreement.

*A. GENERAL PROCEDURES*

The procedures in this Section (General Procedures) shall apply to all operations of all airlines, with the sole exception of those operations expressly provided for in Section B of this Part (Procedures Applicable to Passenger Services on Fifth Freedom Operations to and from Europe/Africa):

1. Airlines of each Party shall follow the procedures normally applied on a nondiscriminatory basis under the laws and regulations of the other Party relating to approvals or reviews of changes in capacity or frequency of services, including inaugurations of new services.

2. All changes in capacity or frequency of services, including inaugurations of new services, of an airline of either Party with respect to any routes or frequencies provided for in this 1998 MOU or the prior agreements, shall be permitted to take effect on the date duly requested by the airline.

3. The operations of designated airlines of either Party performed in accordance with the provisions of this 1998 MOU and within the limits of the formulae in subsection I A 2, above, if applicable, shall be deemed to be in compliance with Articles 10, 11, and 12 of the 1952 Agreement.

4. If the aeronautical authorities of either Party have concerns related to the traffic composition, frequency, or capacity of operations of an airline of the other Party, they shall promptly notify the aeronautical authorities of the other Party of their concerns and the bases therefor and may request consultations under Article 14 of the 1952 Agreement to discuss any reservations expressed by the aeronautical authorities of the Party in the light of experience gained as a result of the operations of such services.

5. In consultations concerning fifth freedom operations of incumbent combination airlines, the aeronautical authorities shall first consider whether the operations at issue are not within the limits of the applicable formulae in subsection I A 2, above, where applicable. If the aeronautical authorities reach agreement that the operations are not within the limits of the applicable formula, then they shall next consider whether the services are consistent with the relevant provisions of the 1952 Agreement.

6. Subject to the requirements of subsection 7 of this Section, consultations shall be held promptly following a request therefor, at a time mutually agreed by aeronautical authorities of both Parties. At such consultations, the aeronautical authorities of both Parties shall seek an agreement as to whether the services are inconsistent with Articles 10, 11, and 12 of the 1952 Agreement, and if so, whether, and to what extent, the services should be modified to comply with the requirements of Articles 10, 11, and 12. Both aeronautical authorities shall exert their utmost efforts to reach an agreement within such reasonable time as the case might require.

7. Consultations described in subsection X A 4, above, may be held only after a six (6) month period of actual operations, or such longer period as may be mutually agreed by the aeronautical authorities of both Parties. With respect to inaugurations of services on new route segments, the six (6) month period of actual operations shall begin after an initial three (3) month start-up period.

8. In the event the aeronautical authorities of both Parties are unable, in the course of consultations, to reach an agreement as to whether an airline's operations meet applicable capacity or frequency requirements, the operations in question shall be permitted to continue

until an agreement is reached as a result of such consultations, or if the aeronautical authorities of both Parties do not reach an agreement as a result of such consultations, until resolution of the questions pursuant to Article 15, 16, or 18 of the 1952 Agreement.

9. Absent agreement of the Parties or resolution of the question pursuant to Articles 15, 16, or 18 of the 1952 Agreement, neither Party shall unilaterally limit a designated airline's operation of agreed routes and frequencies.

10. These procedures shall apply to proposed changes, including inaugurations, of services, notwithstanding the pendency of consultations or the other procedures under this Section on any prior proposals, including proposals to commence or increase services on the same route.

11. The continued operation of services pursuant to the procedures for reviewing operations as set forth in this Section may not in any case be considered by one Party to be a breach of agreement, absent agreement of the Parties.

*B. PROCEDURES APPLICABLE TO PASSENGER SERVICES ON  
FIFTH FREEDOM OPERATIONS TO AND FROM EUROPE/AFRICA*

The procedures in this Section (Procedures Applicable to Passenger Services on Fifth Freedom Operations to and from Europe/Africa) shall apply to all fifth freedom operations to and from Europe/Africa of all combination airlines with respect to passenger services.

1. Airlines of each Party shall follow the procedures normally applied on a nondiscriminatory basis under the laws and regulations of the other Party relating to the filings by airlines of either Party reflecting changes in the capacity or frequency of services including inaugurations of new services, on agreed routes.

2. All changes in capacity or frequency of services, including inaugurations, of fifth freedom operations to and from Europe/Africa may be reviewed by the aeronautical authorities of the other Party to consider whether the planned operations are in compliance with Articles 10, 11, or 12 of the 1952 Agreement. The operations in question may not commence if the reviewing aeronautical authorities object to them, or have withheld any necessary approvals.

3. If the aeronautical authorities of either Party have concerns with respect to such operations, they shall promptly notify the aeronautical authorities of the other Party of their concerns and the bases therefor, and may request consultations under Article 14 of the 1952 Agreement to discuss any reservations expressed by the aeronautical authorities of the Party in the light of projections or data reflecting the probable results of such operations.

4. In consultations concerning passenger services on fifth freedom operations of incumbent combination airlines to points in Europe/Africa, the aeronautical authorities shall first consider whether the operations at issue are within the limits of the applicable formula in subsection I A 2, above. If the aeronautical authorities reach agreement that the operations are

within the limits of the applicable formula, then they shall next consider whether the services are consistent with the relevant provisions of the 1952 Agreement.

5. Consultations shall be held promptly following a request therefor, at a time mutually agreed by the aeronautical authorities of both Parties. At such consultations the aeronautical authorities of both Parties shall seek an agreement as to whether the services should be permitted to be inaugurated or operated. Both aeronautical authorities shall exert their utmost efforts to reach an agreement within such reasonable time as the case might require.

6. In the event the aeronautical authorities of the Parties are unable, in the course of consultations, to reach an agreement as to whether an airline's operations meet applicable requirements, the operations in question shall not be permitted until agreement is reached as a result of such consultations, or, if the aeronautical authorities of both Parties do not reach an agreement as a result of such consultations, until resolution of the questions pursuant to Articles 15, 16, or 18 of the 1952 Agreement.

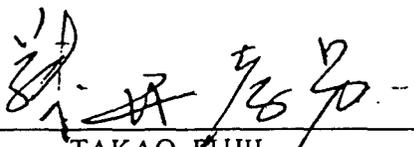
### *C. TERMS APPLICABLE TO ALL OPERATIONS*

1. Neither of the Parties shall be permitted unilaterally to require incumbent combination airlines of the other Party to file traffic reports or data relative to fifth freedom operations to and from Asia/Americas for the purpose of determining its compliance with provisions relating to traffic composition, frequency, or capacity in this 1998 MOU or the prior agreements.

2. Nothing in this 1998 MOU shall be construed to limit the rights of either Party to enforce its domestic competition laws and other laws and regulations on such issues as safety, security and environment against any airline operating services under this 1998 MOU or any of the prior agreements following an appropriate proceeding, so long as such laws and regulations do not discriminate on the basis of nationality or any other improper or inappropriate basis.

### **Part XI. RELATIONSHIP TO OTHER PROVISIONS AND AGREEMENTS**

Nothing in this 1998 MOU shall be construed to impair any existing rights of a Party, under the prior agreements, to reallocate frequencies, select new points or change points for service, or substitute airlines.

  
\_\_\_\_\_  
TAKAO FUJII  
MINISTER OF TRANSPORT  
OF JAPAN

  
\_\_\_\_\_  
RODNEY E. SLATER  
SECRETARY OF TRANSPORTATION  
OF THE UNITED STATES OF AMERICA

Washington, March 14, 1998

APPENDIX

WEEKLY FREQUENCIES BASED ON SCHEDULES  
FOR THE 1997/1998 IATA WINTER SEASON

CITY-PAIRS	ANA	CO/CM/AM	JAL	NW	UA
TKO-NYC	7		8	7	11
TYO-CHI			7	7	6
TYO-SFO			7	7	14
TYO-LAX	7		13	7	14
TYO-HNL		7	30	14	10
TYO-GUM/SPN		17	18	14	
OSA-LAX			7	7	7
OSA-HNL			14	14	7
OSA-GUM/SPN	7	14	14		7
NGO-HNL	7		7	7	
FUK-HNL			7	1	

DEPARTMENT OF STATE  
WASHINGTON

April 20, 1998

Excellency:

I have the honor to acknowledge the receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honor to refer to the recent consultations on the Civil Air Transport Agreement between Japan and the United States of America signed at Tokyo, on August 11, 1952, as amended (hereinafter referred to as the "1952 Agreement"). I have further the honor to propose, on behalf of the Government of Japan, that the provisions contained in the Memorandum of Understanding signed in Washington, on March 14, 1998, attached hereto, which were negotiated with a view to ensuring the implementation of the 1952 Agreement in a manner appropriate to the Japan-U.S. aviation relationship, shall be implemented and that, with respect to routes, the Schedule to the Agreement be modified accordingly.

If the above proposal is acceptable to the Government of the United States of America, I have the honor to propose that this Note with its attachment and Your Excellency's Note in reply shall constitute an

His Excellency

Kunihiko Saijo,

Ambassador of Japan.

agreement between the Government of Japan and the Government of the United States of America which will enter into force on the date of Your Excellency's reply."

I have the honor to inform Your Excellency that the Government of the United States of America accepts the above proposal of the Government of Japan and to confirm that Your Excellency's Note with its attachment and this reply shall constitute an agreement between our two Governments, which will enter into force on the date of this reply.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

*Alan Larson*