ORDER: 89-9-51 & 91-1-41
ISSUED: SEP 29, 1989;
JAN 23, 1991

(OWNERSHIP & BILATERAL AGREEMENTS, DEBT, DEFAULT)

Order 89-9-51

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

SERVED SEP 29 1989

Issued by the Department of Transportation
on the 29 th day of September, 1989

In the matter of THE ACQUISITION OF NORTHWEST AIRLINES BY WINGS HOLDINGS, INC.	Docket 46371

CONSENT ORDER

I. BACKGROUND

On June 19, 1989, NWA, Inc., the parent company of Northwest Airlines, Inc., announced that it had entered into a definitive merger agreement with Wings Holdings, Inc. (Wings). Subsequently, Wings, through a wholly owned subsidiary, issued a tender offer for all of the outstanding stock of NWA. The tender offer was completed on July 26, 1989, and the merger was consummated on August 4, 1989.

Section 401(r) of the Federal Aviation Act imposes on air carriers the requirement that after having been initially found fit to provide service, they must continue to satisfy the Department's fitness requirements. Section 401(r) also imposes on air carriers the obligation to provide any information necessary to make a determination that they continue to be fit. In addition, pursuant to sections 401 and 101(3), all air carriers are required to be citizens of the United States as that term is defined in section 101(16) and interpreted in case precedent. Under section 204.4 of our Economic Regulations, 14 C.F.R. 204.4, carriers undergoing substantial changes in operations are required to provide the Department with information relevant to their continuing fitness and citizenship. In carrying out its continuing fitness responsibilities, the Department has considered substantial changes in operations to include significant changes in ownership and financial posture.

On June 28 and July 11, 1989, the Department wrote to Wings and Northwest requiring them to file specific information relating to the carrier's continuing fitness and citizenship.[1] This

[1] Follow up information requests were sent to Wings and Northwest on August 22, 1989, and September 12, 1989.

information has been submitted over the course of the last three months.[2]

Wings acquired Northwest with a total acquisition financing of 81.5 percent debt and 18.5 percent equity.[3] Almost two-thirds of the voting stock of Wings is owned or controlled by two U.S. citizens, Alfred Checchi and Gary Wilson. Together they can appoint a majority of the Wings directors.

The total equity investment in Wings was $705 million. Of this amount, $500 million was in the form of preferred stock, which is nonvoting. The remaining $205 million was in the form of common stock, only some of which is voting.

Messrs. Checchi, Wilson and Malek purchased approximately half of the common stock (voting and nonvoting) of Wings for approximately $40 million. They hold no preferred stock.

Koninklijke Luchtvaart Maasschappij (KLM), a Dutch citizen and foreign air carrier, was the largest provider of equity, having purchased $350 million in preferred stock and $50 million in common stock. KLM also has an option to purchase additional voting common stock. A second foreign equity owner is Elders IXL Ltd. (Elders), an Australian citizen and investment company, which holds $50 million in preferred Wings stock and, through an affiliate, Wings Acquisition Investor, Ltd. (WAI), $30 million in common stock. All of the other equity holders are U.S. citizens.

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[2] A significant amount of these submissions have been accompanied by motions requesting that the information be granted confidential treatment on the grounds that it constitutes "trade secrets and commercial information" which is "privileged or confidential" within the meaning of Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). Wings states that it and other entities would be prejudiced significantly in their business dealings if the information was made available to the public.

We have decided to grant the motions except for the information which is disclosed in this order. We have sought to minimize the information which must be disclosed so as only to release that information which is essential to an understanding of our decision in this case. We find that it is in the public interest for us to disclose this limited amount of information so that interested persons are provided a clearer picture of the Department's policies with respect to air carrier fitness and citizenship.

[3] Taking into consideration the assumption of pre-existing debt and capital lease obligations, Wings' capitalization at merger consisted of 85 percent debt. This transaction increased NWA's debt-to-equity ratio from 0.42/1 to 5.85/1.

The debt component is $3.1 billion and was provided through bank loans. Bankers Trust New York Corporation (Bankers Trust) served as agent bank for the syndicate of 37 banks that provided the loan commitment, as well as a revolving line of credit. Approximately two-thirds of the debt was provided by foreign banks. Japanese banks are providing about half of this foreign debt with Dutch banks providing a small portion of the debt financing.

KLM and Elders each have one representative on the twelve-person Wings board of directors. The KLM representative is Managing Director of KLM and also sits on KLM's Board of Managing Directors. In addition, KLM and Wings have stated that they contemplate entering into a host of cooperative agreements, described in more detail below. KLM also has the right to establish a three-person committee to advise Northwest management on its financial affairs.

On September 28, 1989, the Department received reports that a number of the key management officials of Northwest Airlines had resigned. The managerial competence and compliance disposition of their replacements will have to be shown in order for the carrier to demonstrate compliance with the Department's fitness requirements.

<u>II. SUMMARY OF ORDER</u>

We are continuing our review of the acquisition of Northwest by Wings, and set forth some of our conclusions below. Wings and Northwest disagree with a number of the Department's conclusions, but have agreed to take a number of steps to allay the Department's concerns and render unnecessary further Department action.

At present we have no reason to question Northwest's continuing fitness. We will, however, have to evaluate the managerial competence and compliance disposition of Northwest's new officers. In this regard, Northwest's new owners appear to be exceptionally well-qualified to expand Northwest's operations and improve its quality of service. In addition, we believe that Northwest currently continues to have access to sufficient financial resources adequately to perform its operations and to meet its public interest obligations. Finally, Wings has a satisfactory compliance disposition.

However, we have two significant concerns. The first relates to the degree of foreign participation in Wings. We believe that, absent the steps agreed to here, KLM could be in a position to exert actual control over Wings, and therefore over Northwest. In order to render unnecessary further action by the Department, Northwest and Wings have agreed that KLM's share of Wings' equity will be significantly reduced, KLM's right to appoint a financial advisory committee will be terminated, and KLM's representation on

Wings' board of directors will be significantly restricted with respect to access to information and involvement in competitively sensitive matters being considered by Northwest. They have also agreed to certain reporting conditions designed to ensure that Northwest remains a citizen, once these changes have been made.

The second issue relates to the significant amount of debt that Wings has taken on in order to complete the acquisition. While we have concluded that Northwest's current financial posture and operating plans meet our fitness criteria, we need to be able to monitor its future financial ability to service this new debt, carry out its plans, and continue to operate safely.

Wings and Northwest have agreed to comply with a set of data access and reporting provisions that will enable the Department to monitor Northwest's financial situation. The goal of these provisions is to obtain information that might indicate financial trouble in the future so that we will be in a position to carry out our duties relating to the carrier's continuing fitness and safety, quickly if necessary.

III. FOREIGN INTERESTS IN WINGS

Our belief that KLM is in a position to exercise actual control over Northwest derives from the multiplicity and importance of links between KLM and Wings. At the outset, we note that this case does not present a problem with the requirement in the Federal Aviation Act that the President and two-thirds of the board of directors and other managing officers be U.S. citizens and that 75 percent of the voting stock in the company be owned or controlled by U.S. citizens.[4] Rather, this case raises our concern regarding the other half of our citizenship test: the requirement that a carrier (and its parent company) in fact be under the actual control of U.S. citizens.

This latter test has traditionally been a complex matter in past cases.[5] Analysis in this area has always necessarily been on a

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4 Federal Aviation Act of 1958, section 101(16), 49 U.S.C. App. 1301(16) (West Supp.).

5 *E.g., In the matter of Intera Arctic Services, Inc.*, Order 87-8-43, issued August 18, 1987; *Application of Premiere Airlines, Inc.*, 95 C.A.B. 101 (1982); *Willye Peter Daetwyler, d.b.a. Interamerican Airfreight Co., Foreign Permit*, 58 C.A.B. 118 (1971). Federal communications law also sets specific standards regarding ownership and management of broadcasters by aliens. 47 U.S.C. $ 310(b) (West Supp. 1989). "[E]ven in instances in which the technical statutory requirements are met, the Commission may still find that aliens exercise an effective control over the operations of a station that is contrary to statutory policy." *Telemundo, Inc. v. F.C.C.*, 802 F.2d 513, 516 (D.C. Cir. 1986).

case-by-case basis, as there are myriad potential avenues of control. The control standard is a *de facto* one -- we seek to discover whether a foreign interest may be in a position to exercise actual control over the airline, *i.e.*, whether it will have a substantial ability to influence the carrier's activities.[6]

Several foreign entities have contributed capital to Wings. Based on our review, we do not believe that any of the various foreign banks participating in the debt package is currently in a position alone to exercise control over Wings, nor is there any indication that two or more of these banks together are currently in such a position. Although the debt agreements do contain covenants that restrict to some extent Northwest's activities, they are clearly aimed at protecting the debtholders' interests. For the most part, those covenants are of a standard variety, common in the industry, and do not involve the carrier's regular operations. In addition, several novel and important provisions allow U.S. banks a veto over decisions of their foreign counterparts.

The remaining foreign entities are Elders, WAI, and KLM. For purposes of this analysis, we treat Elders and WAI as a single entity, rather than as two distinct concerns with a common interest, because WAI is an affiliate of Elders apparently created to acquire an equity interest in Wings. However, we see no opportunity at this point for Elders/WAI acting alone to exert control over Wings. Elders/WAI has only 15.4 percent of Wings' voting stock, and a single director. More significant here, however, is the relatively modest proportion of Elders' investment in comparison to Wings' *total* equity -- approximately $80 million of $705 million, or 11.3 percent. In addition, there is no evidence that Elders presently has any but a pecuniary interest in the transaction, and that interest does not appear to be given weight disproportional to the scope of the interest. Accordingly, we do not believe that Elders/WAI alone is in a position to exercise control over Wings or Northwest.

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[6] We recently applied the U.S. citizen definition of section 101 in the context of Title XI of the Act:

> [F]oreign influence may be concentrated or diffuse. It need not be identified with any particular nationality. It need not be shown to have sinister intent. It need not be continually exercisable on a day-to-day basis. If persons other than U.S. citizens, individually or collectively, can significantly influence the affairs of IAS, it is not a U.S. citizen.

In the matter of Intera Arctic Services, Inc., Order 87-8-43, issued August 18, 1987, at 5.

A. KLM

KLM's interest contrasts sharply with Elders'. First and most prominently, KLM's equity interest in Wings is significantly greater, both in absolute and proportional terms. Second, KLM can exert influence in a number of ways that offset the lack of voting rights of its preferred stock. Finally, KLM is an actual competitor in a number of markets[7] and a potential competitor in others, and has stated an intention to become involved in the decisions of Wings and Northwest. We believe that these elements taken together would, if left unaltered, put KLM in a position to exercise control over Wings and Northwest within the meaning of the Act. We now examine each of these factors in turn.

1. Investment interest

KLM has contributed a substantial portion of the equity in Wings -- $400 million of $705 million, or 56.74 percent. This interest alone would not void Northwest's citizenship under the numerical test of section 101(16) because the bulk of KLM's interest is in nonvoting stock. (KLM would hold less than 5 percent of Wings' voting stock. Together KLM and Elders would hold about 20 percent of the voting stock.) However, it is clear from our precedent that a large share in a carrier's equity poses citizenship problems, even where the interest does not take the form of voting stock, particularly if there are other ties to the foreign entity.[8]

KLM's nonvoting stock is *equity*, and as such represents a genuine ownership interest. The fortunes of KLM's investment will follow Northwest's more closely than those of creditors, will not be as secure as those of creditors, and will accordingly provide KLM with more incentive to participate in the airline's business decisions.

These characteristics are reflected in provisions calculated to protect holders of preferred stock. KLM may prevent the issuance by Wings of securities of equal or greater preference for purposes of liquidation, dissolution, or dividends. It can also block any amendments to the Certificates of Incorporation or Designation that would materially and adversely affect the specified

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[7] Northwest's has represented to us that its traffic in the markets where these carriers compete on a nonstop or one-stop basis amounts to less than five percent of Northwest's total revenues.

[8] *In the Matter of Intera Arctic Services, Inc.*, Order 87-8-43, issued August 18, 1987, at 11-12, Order 87-3-32, served March 9, 1987, at 3; *In the Matter of Page Avjet Corporation*, 102 C.A.B. 488 (1983).

designations, preferences, or special rights of its preferred stock. In short, KLM's preferred stock, even though nonvoting, is genuinely an equity rather than debt interest. Even alone, this amount and kind of equity interest would raise very serious citizenship concerns. In conjunction with the other elements, it is unacceptable.

Although KLM's investment was in the form of equity and not debt, a conversion of a part of its investment to debt would not allay our citizenship concerns. Debt interests can raise many of the same control concerns as equity interests, and here, with the other indicia of control discussed below, a debt interest by KLM would also be a problem. It would also increase Wings/Northwest's debt level.

2. Other links

In addition to the right to name one of Wings' twelve directors, which in and of itself would not violate section 101(16), KLM has the right to name a three-person committee having the general responsibility of advising Wings on the management of Northwest's financial affairs. There are no restrictions on the KLM board member's participation in Northwest's decisionmaking. The record also indicates no limits on the scope of advice allowed from the financial advisory committee. Such advice and the opinions of KLM's director are likely to reflect KLM's financial interest, and it is reasonable to assume that they will be considered in proportion to the size of KLM's equity investment. KLM will thus be in a strong position to exert substantial influence over Northwest's affairs.

According to their filings and representations to the government, Northwest and KLM anticipate a variety of operational arrangements. These arrangements, while not clearly delineated or currently agreed to, anticipate cooperation in marketing, sales, scheduling, operations, and customer services. Moreover, they have agreed that "neither party will enter into other arrangements which are contrary to the purpose or spirit of the cooperative arrangements to be entered into between them."[9] This aspect of the agreement is broad in nature, and some nonstandard arrangements entered into by Northwest and KLM would require close DOT scrutiny so as to ensure Northwest's ability to manage itself free from foreign control.

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9 SEC Tender Offer Statement, Schedule 14D-1, filed July 12, 1989, at 34.

3. Implications of Foreign Carrier Investment

Given identical sets of operative facts, the Department will normally give stricter scrutiny to the case where the foreign investor is an air carrier. If that foreign carrier is also an actual or potential competitor, it may well have an interest in attempting to exercise control over the U.S. carrier that is or might become available. Northwest provides nonstop transatlantic service between (1) Boston and Amsterdam, Glasgow, Frankfurt and Copenhagen; (2) Detroit and Frankfurt and Paris; (3) Minneapolis and London and (4) New York and Glasgow. KLM provides nonstop service between Amsterdam and Atlanta, Chicago, Houston, Los Angeles, New York, Orlando and Anchorage. While there currently is no direct nonstop competition between KLM and Northwest, both carriers provide one-stop service between New York and Frankfurt, Paris, London, and Copenhagen. Moreover, KLM serves virtually every major European city beyond Amsterdam and both carriers compete for this pool of traffic.[10] Because KLM is an actual and potential competitor of Northwest, those concerns are present here.

We must interpret the evidence in light of the above considerations and therefore believe that, absent the changes agreed to by Northwest, KLM would be in a position to exercise control over Northwest, and that the latter could thereby cease to be a U.S. citizen for purposes of the Federal Aviation Act.

B. Compliance

Although not agreeing with the Department that KLM has exercised or is in a position to exercise any actual control, Northwest and Wings have agreed to take a number of steps to eliminate any question that the carrier may be in violation of the citizenship requirements of the Act. They have decided to make these changes to avoid potentially costly litigation and the prolonged uncertainty that could result. In consideration of the changes, the Department has determined not to institute a continuing fitness or citizenship proceeding.

Northwest and Wings have agreed to reduce KLM's share of Wings' equity investment to a maximum of 25 percent of total equity without KLM's acquiring a debt interest. This change in KLM's interest will be completed over the next six months; however, if after six months Northwest demonstrates that it is making good faith efforts to achieve the equity interest goals, the Department may permit an extension of time up to an additional six months to achieve them. Until KLM's equity interest is changed, KLM's interest beyond 25 percent will be placed in a voting trust with a U.S. trustee that is free of KLM's control.

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10 Worldwide Official Airline Guide, June 1989 edition.

Furthermore, Northwest and Wings have agreed to terminate KLM's right to appoint a financial advisory committee and that KLM's representative on the Board of Directors will be recused in specified circumstances. Finally, Northwest has agreed to take on a continuing obligation to file two types of reports regarding its citizenship: it will report to the Department any change in ownership of any class of stock in Wings within 30 days of such change, and it will file with the Department any agreement between Northwest and KLM other than standard interline agreements and other standard industry agreements.

Our analysis indicates that these steps represent the most effective way to preserve Northwest's citizenship. KLM's large equity investment is the principal force behind its ability to exercise control over Wings; its stock represents 56.7 percent of that investment. Even with the other links in place, KLM's ability to influence Northwest would be significantly reduced by shrinking its relative interest.

While reducing KLM's proportionate stake in Wings alone would go far to allay our concerns, we remain concerned about the avenues of access provided by the three-person financial advisory committee and a representative on the Wings' board of directors. The committee would have access, presumably on a broad basis, to the senior management of Northwest on matters concerning the airline's financial affairs. These, in turn, would be likely to include most phases of corporate activity. The representative on the board would provide KLM with the ability to participate at the highest level of decisionmaking in the company with respect to sensitive competitive and international aviation matters. The dissolution of the advisory committee and the recusal of KLM's representative on the Wings' board of directors in specified circumstances will alleviate these other concerns regarding Northwest's citizenship.

Northwest and Wings have also agreed to file certain reports regarding their foreign equity holders and cooperative agreements. This information will enable the Department to monitor the total amount of Wings' equity that may come to rest in foreign hands[11] and the degree and type of cooperation which the two carriers seek to engage in so as to assure that foreign control does not result.

IV. FITNESS RELATED DATA PROVISIONS

In order to determine whether a carrier continues to be fit after undergoing a substantial change in an area such as ownership, management or financial structure, the Department looks to see whether the carrier continues to (1) have a management team with

[11] Foreign interests already hold 20.27 percent of the voting common stock of Wings.

sufficient experience and expertise properly to oversee its operations; (2) demonstrate a positive disposition to comply with the Act and other laws and regulations imposed by Federal and state authorities; and (3) have available to it sufficient financial resources to perform its operations without posing any undue risks to consumers. We have examined Northwest with respect to each of these broad standards, and we found no reason to question the carrier's management team, compliance disposition, or current financial fitness. However, as discussed above, we will have to review the managerial competence and compliance disposition of Northwest's new officers.

Wings has been fully cooperative in the Department's review of its acquisition of Northwest. It has filed large volumes of pertinent data and information in a timely fashion. Moreover, it has made its owners, managers and technical experts available to meet with Department staff to elaborate on the material and answer any questions that the Department had. The owners have extensive successful experience in service industries that should enable them to make a significant contribution to the ongoing success of the airline. Furthermore, those owners have an excellent reputation in the business community in terms of both integrity and business acumen.

Notwithstanding the foregoing, the acquisition involved considerable additional debt and the Department must have the ability to monitor Northwest's future performance to ensure the significantly increased debt service does not adversely affect the carrier's margin of safety or otherwise place consumers at risk. Although we have seen no indication that Northwest has reduced its maintenance, training, security or other safety related programs, we intend to increase our monitoring of the carrier in these areas.

Northwest has agreed to make available to the Department the data and other financial information we need to maintain this increased level of monitoring. The specific information which will be made available is set forth in Appendix A. In part, this information is needed because the company is privately held, and thus not required to file certain reports with the Securities and Exchange Commission. The information we receive will allow us to detect potential problems before they create serious concerns.

ACCORDINGLY, pursuant to sections 204, 401, and 407 of the Federal Aviation Act of 1958, as amended, and Part 204 of our Economic Regulations:

1. Wings Holdings, Inc., NWA, Inc., and Northwest Airlines are ordered as follows:

(a) To make the information set forth in Appendix A available to the Department as set forth therein;

(b) To report to the Department of Transportation: (i) for purposes of monitoring foreign equity ownership, any increase in ownership by any foreign person or entity of any class of stock in Wings Holdings or Northwest; and (ii) for purposes of monitoring continuing fitness, any substantial change in the equity ownership in Wings Holdings or Northwest. These reports shall be made within 30 days after any such change;

(c) To file with the Department of Transportation any agreements between Northwest and KLM, other than standard interline and other standard industry agreements within 30 days after entering into the agreement; In reviewing these agreements, the Department will not apply policies that are different from those applicable to other carriers;

(d) To assure that, within six months of the service date of this order, KLM does not hold more than one-quarter of the total equity of, or acquire any debt in, Wings Holdings; provided, however, that the Department may, upon a showing of good faith efforts to achieve this goal, permit an extension of this requirement for up to an additional six months;

(e) To place KLM's interest beyond 25 percent in a voting trust satisfactory to the Department pending full compliance with ordering paragraph 1.(d); this trust shall have a U.S. citizen trustee that is free of KLM's control;

(f) To assure that (A) KLM's representative on the board of directors of Wings Holdings, NWA, Inc., or Northwest or (B) any other person having a fiduciary duty to or employment relationship with KLM serving on the board of directors of Wings Holdings, NWA, Inc., or Northwest does not participate in, or receive any information relating to, any matter which may have a direct and predictable effect on (i) the financial interest of KLM's operations, (ii) actual or potential competition with KLM in any market or markets, or (iii) bilateral or multilateral aviation negotiations to which KLM or the Government of the Netherlands is a party. To carry out this obligation, Northwest shall, within 30 days of the service of this order, submit to the Department for approval a plan for recusal of the KLM representative in the circumstances covered by subsections (i), (ii) and (iii); and

(g) To assure that KLM has dissolved its three-member financial advisory committee.

2. If the Federal Aviation Act of 1958 is amended or modified in a manner that would preclude the policies set forth therein; or if legislation is enacted into law which precluded DOT from enforcing the terms of this consent order or mandates DOT to enforce policies inconsistent with this order; the Secretary will conduct a review to determine whether any provision(s) of this order should be revised or eliminated;

3. Except to the extent that information is disclosed in this order, we grant the various motions for confidential treatment of information filed in this docket; and

4. This order shall become effective ten days after service.

By:

SAMUEL K. SKINNER
Secretary

(SEAL)

Agree to ordering paragraphs and Appendix A:

For Wings Holdings, Inc.

For Northwest Airlines, Inc.

APPENDIX A

FINANCIAL FITNESS FILING REQUIREMENTS

A. Forecasts and Budgets

1. Annual budgets of NWA, Inc., and Northwest by month for the upcoming fiscal year setting forth the principal assumptions upon which the budget is based, and a comparison of the current year-to-date financial results against previous budget projections. This material, which is to be filed with the lenders pursuant to Section 8.01(e) of the credit agreement shall be supplied within 75 days of the beginning of each fiscal year.

2. A consolidated plan updated annually for each of the next five fiscal years for NWA, Inc., and Northwest which includes forecast consolidated balance sheets, income statements, retained earnings statements, and cash flow statements for such periods and the amount of forecast capital expenditures for such years. Such information shall be shown with respect to each quarter of the first fiscal year covered by such plan. This material which is required to be supplied to lenders pursuant to section 8.01(m) of the credit agreement shall be supplied within 120 days after the close of each fiscal year or when supplied to lenders, whichever occurs first.

3. The annual forecasts/budgets described in III. A.1 and 2 above shall include or be accompanied by:

a. An overview of Northwest's present markets and traffic results (for Domestic/Transborder, Atlantic, and Pacific operations) and a summary projection of future markets and traffic results, including a comparison of forecast traffic results for the previous year against actual results.

b. A description of Northwest's expansion and contraction plans, identifying target markets (stations, gateways, etc.), and expected service suspension/termination dates.

c. A description of Northwest's strategies to achieve the results and fulfill the plans covered in paragraphs 3.a. and 3.b.

d. An estimate of maintenance expenditures by aircraft type for aircraft, spares, and rotables, including expenses to comply with the FAA's airworthiness requirements for aged aircraft.

e. An estimate of airport security, noise abatement, aircraft maintenance and aircraft modifications and related employee training. To the extent that significant new safety related costs arise, Northwest and the Department will work together to reach a mutually agreeable reporting provision.

f. A certification that the budgets and plans have been reviewed and approved by the boards of directors of Wings and NWA.

4. To the extent not already reflected in the filed annual forecast or budget, a list of major asset transactions (unforecast asset acquisitions or sales which during any 30-day period aggregate to $50 million or more). Northwest shall notify the Assistant Secretary for Policy and International Affairs or his/her designee at least 10 days <u>before</u> the transaction occurs.

B. Financial Statements

1. Quarterly and year-end [consolidating and] consolidated balance sheets, income statements, retained earnings statements, and cash flow statements for Wings Holdings (and its subsidiaries), NWA, Inc. (and its subsidiaries), and Northwest (and its subsidiaries). The year-end statements shall be audited and accompanied by a written statement by the independent public accountants giving the report thereon. The quarterly statements are to be filed within 60 days after the end of the first three quarters of the fiscal year and the year-end statements are to be filed within 120 days after the end of the fiscal year. The required reports must also be filed with lenders pursuant to Sections 8.01(a) and (b) of the credit agreement.

2. The following items should be specifically broken out in the financial statements or identified separately to the extent they do not otherwise appear:

a. Long-term debt payment activity, with emphasis on payments on LBO debt, showing cumulative interest and principal paid-to-date.

b. A summary of capital expenditures (or receipts from divestitures) for equipment, service expansion, airport construction, etc.

c. Actual maintenance expenditures for aircraft, spares, and rotables, by aircraft type, including expenses to comply with the FAA's airworthiness requirements for aged aircraft. Such expenditures should be compared to the projected expenses for these items, and any differences should be explained.

d. Actual expenditures for the items covered by paragraph A.3.d. of this Appendix. Such expenditures should be compared to the projected expenses for these items, and any differences should be explained.

3. Copies of "NWA, Inc. Financial and Statistical Report" as at the end of each monthly accounting period shall be provided no later than 45 days after the end of such period.

4. A quarterly list of the number of current employees by category (including pilots, flight attendants, mechanics, other ground crew, management, etc.) compared to pre-acquisition numbers.

5. A description of any default of any covenant requirement imposed by lenders and a description of what steps are being taken to resolve the default. The description requested here shall be provided within 5 days of any lender notification of default made pursuant to the credit agreement.

C. Method of Providing Information

1. The information required by the following paragraphs of this Appendix shall be made available to DOT staff at Northwest's or its attorneys' offices in Washington, D.C.: A.1., A.2., 3.a., 3.b., 3.c., B.2.b., and B.3.

2. The information required by the following paragraphs of this Appendix shall be provided to the Assistant Secretary for Policy and International Affairs, or his/her designee, and the rules in 14 C.F.R. 302.39 relating to confidential treatment shall be applicable: A.3.d., A.3.e, A.3.f, B.1., B.2.a., B.2.c., B.2.d., B.4. and B.5.

3. The information required by paragraph A.4. of this Appendix shall be provided as specified in that paragraph.

D. Reporting Formats and Details

Northwest's and the Department's staffs will work together and, within 60 days, will develop a reporting format that spells out the details of the provisions above. They will cooperate with each other so that the needs of the Department are fully met without imposing unreasonable burdens on Northwest.

E. Review and Sunset

1. The Secretary of Transportation will periodically review this Appendix to ensure that all of its provisions remain necessary for the Department to fulfill its responsibilities and may waive or eliminate any provision(s) as appropriate.

2. The provisions of this Appendix shall terminate six years after the service date of this order unless the Secretary of Transportation determines that continued reporting is necessary and orders such reporting.