AVIATION

Transport Services

Agreement Between the
UNITED STATES OF AMERICA
and FIJI

Amending the Agreement of
October 1, 1979, as Amended

Effected by Exchange of Notes
Dated at Suva July 10 and August 19, 1996

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.''

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FIJI

Aviation: Transport Services

Agreement amending the agreement of October 1, 1979, as amended.
Effected by exchange of notes
Dated at Suva July 10 and August 19, 1996;
Entered into force August 19, 1996.

The American Embassy to the Ministry of Foreign Affairs of Fiji

EMBASSY OF THE
UNITED STATES OF AMERICA

Note No. 74

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Government of the Republic of Fiji and has the honor to refer to discussions between delegations representing the Government of the United States of America and the Government of the Republic of Fiji in Washington, on January 10-11, 1996, concerning the Civil Air Transport Agreement between the Government of the United States of America and the Government of the Republic of Fiji, signed at Suva, October 1, 1979, as amended ("The Agreement"),[1] and to the Memorandum of Understanding recommended by the delegations to their government (appended hereto).

The Embassy confirms acceptance, on behalf of the Government of the United States of America, of the provisions in said Memorandum of Understanding.

If this proposal is acceptable to the Government of the Republic of Fiji, the Embassy proposes that this note with its attachment and the Ministry's affirmative note in reply shall constitute an agreement between the two governments to amend the agreement, which shall enter into force on the date of the Ministry's reply and which shall supersede the Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Fiji, signed at Washington, October 25, 1985.[2]

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Government of the Republic of Fiji the assurances of its highest consideration.

Embassy of the United States of America

Suva, July 10, 1996

[1] TIAS 9917, 11143; 32 UST 3747.
[2] TIAS 11143.

ATTACHMENT B

MEMORANDUM OF UNDERSTANDING

In accordance with the understandings reached ad referendum by delegations representing the Government of Fiji and the Government of the United States of America at discussions held in Washington, D.C., on January 10-11, 1996, the Government of Fiji and the Government of the United States of America agree to amend the Air Transport Agreement signed at Suva on October 1, 1979, as amended, as follows:

I. Article 10 - - Fair Competition and Capacity, as amended by the Memorandum of Understanding dated October 25, 1985, remains unchanged, and continues to read as follows:

"ARTICLE 10

A. FAIR COMPETITION

1. Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in the international air transportation covered by this Agreement.

2. Each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the airlines of the other Party.

B. CAPACITY

Neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational or environmental reasons under uniform conditions consistent with Article 15 of the Convention."

II. Article 11--Pricing, is replaced in its entirety with the following pricing article:

"ARTICLE 11

PRICING

1. Each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

a. prevention of unreasonably discriminatory prices or practices;

b. protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and

c. protection of airlines from prices that are artificially low due to direct or indirect governmental subsidy or support.

2. Each Party may require notification to or filing with its aeronautical authorities of prices to be charged to or from its territory by airlines of the other Party. Notification or filing by the airlines of both Parties may be required no more than 30 days before the proposed date of effectiveness. In individual cases, notification or filing may be permitted on shorter notice than normally required. Neither Party shall require the notification or filing by airlines of the other Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes.

3. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by (a) an airline of either Party for international air transportation between the territories of the Parties, or (b) an airline of one Party for international air transportation between the territory of the other Party and any other country, including in both cases transportation on an interline or intraline basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph (1) of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the price shall go into effect or continue in effect."

III. Article 12--Commercial Operations, is amended to add new paragraphs E., F. and G. at the end thereof, to read as follows:

"E. Each designated airline shall have the right to perform its own ground-handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. These rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines and charges shall be just and reasonable.

"F. In operating or holding out the authorized services on the agreed routes, provided that all airlines in such arrangements: 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements, any designated airline of one Party may enter into cooperative marketing arrangements such as blocked-space, code-sharing or leasing arrangements, with

i) an airline or airlines of either Party; and

ii) an airline or airlines of a third country, 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.

G. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation."

IV. Article 13--Charter Air Services, shall be replaced in its entirety with the following charter article:

"ARTICLE 13

CHARTER AIR SERVICES

1. Airlines of each Party designated to provide charter service, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters):

Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of the other Party; and

Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.

In the performance of services covered by this Article, airlines of each Party designated under this Article shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; and (3) to combine on the same aircraft traffic originating in one Party's territory, traffic originating in the other Party's territory, and traffic originating in third countries.

Each Party shall extend favorable consideration to applications by airlines of the other Party to carry traffic not covered by this Article on the basis of comity and reciprocity.

2. Any airline designated by either Party performing international charter air transportation originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

3. Neither Party shall require prior approval of charter flights, except as may be required on a non-discriminatory basis to enforce uniform conditions forseen by Article 10B, and as provided in paragraph 4 below.

4. Nothing contained in paragraphs 2 and 3 above shall limit the rights of either Party to require airlines designated under this Article by either Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

5. Except with respect to the consumer protection rules referred to in the preceding paragraph above, neither Party shall require an airline designated under this Article by the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Article or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities."

V. The "AIR ROUTE SCHEDULE", shall be replaced in its entirety with the following "ANNEX I--SCHEDULED SERVICE ROUTE SCHEDULE":

"ANNEX I

SCHEDULED SERVICE ROUTE SCHEDULE

A. For Fiji:

1. An airline or airlines designated by the Government of Fiji for scheduled air services shall be entitled to operate international air services on each of the specified routes, in both directions and to make scheduled landings in the United States at the points specified in this paragraph:

a. From Fiji via Auckland, New Zealand to Hawaii and Los Angeles and beyond to Vancouver, Canada, and beyond Los Angeles to Frankfurt, Germany (Los Angeles-Frankfurt effective November 1, 1996, to be served only on a code share basis without local traffic rights, but including own stopover traffic).

b. From Fiji to Hawaii and San Francisco.

c. From Fiji via intermediate points in the area of the South Pacific Commission[1] to Guam and the Commonwealth of the Northern Mariana Islands, and beyond Guam to a mutually agreed point in Japan (excluding Tokyo, Osaka, Nagoya and Okinawa).

[1] See attached Map for authorized area. [Footnote in the original.]

d. From Fiji via intermediate points in the area of the South Pacific Commission [1] to Pago Pago and beyond via points in the area of the South Pacific Commission to Tahiti.

2. Points on any of the specified routes may, at the option of each designated airline, be omitted on any or all flights.

B. For the United States:

1. An airline or airlines designated by the Government of the United States for scheduled air services shall be entitled to operate international air services on the specified route, in both directions and to make scheduled landings in Fiji:

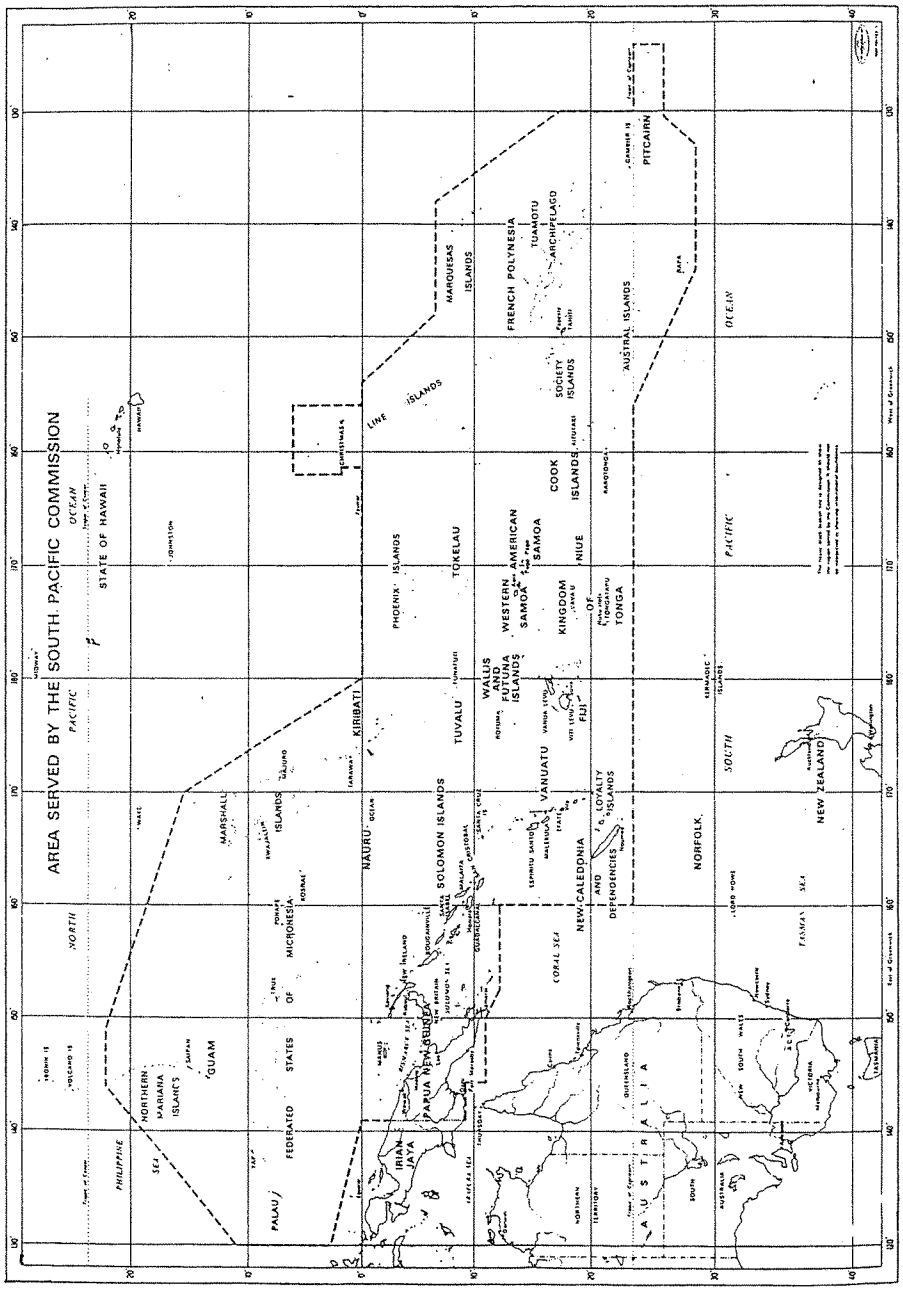
From the United States via intermediate points to a point or points in Fiji and beyond to Australia, New Zealand, points in the area of the South Pacific Commission,[1] Papua New Guinea, Indonesia, Malaysia, the Philippines and Singapore.[2]

2. Points on the specified route may, at the option of each designated airline, be omitted on any or all flights.

C. On any segment or segments of the routes, any designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, in the outbound direction, the 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."

[1] See attached Map for authorized area.

[2] Beyond rights to Malaysia, the Philippines and Singapore are for all-cargo services only. [Footnotes in the original.]


AREA SERVED BY THE SOUTH PACIFIC COMMISSION
NORTH PACIFIC OCEAN
STATE OF HAWAII
PHILIPPINE SEA
NORTHERN MARIANA ISLANDS
GUAM
FEDERATED STATES OF MICRONESIA
PALAU
MARSHALL ISLANDS
NAURU
KIRIBATI
PHOENIX ISLANDS
LINE ISLANDS
TOKELAU
TUVALU
WALLIS AND FUTUNA ISLANDS
WESTERN SAMOA
AMERICAN SAMOA
COOK ISLANDS
NIUE
KINGDOM OF TONGA
FRENCH POLYNESIA
TUAMOTU ARCHIPELAGO
SOCIETY ISLANDS
MARQUESAS ISLANDS
AUSTRAL ISLANDS
PITCAIRN
SOLOMON ISLANDS
VANUATU
NEW CALEDONIA AND DEPENDENCIES
LOYALTY ISLANDS
NORFOLK
CORAL SEA
TASMAN SEA
NEW ZEALAND
SOUTH PACIFIC OCEAN
AUSTRALIA
PAPUA NEW GUINEA
IRIAN JAYA

VI. A new Annex II - - Principles of Non-Discrimination Within and Competition among Computer Reservations Systems, is added to the Agreement, to read as follows:

"ANNEX II

PRINCIPLES OF NON-DISCRIMINATION WITHIN AND COMPETITION AMONG COMPUTER RESERVATIONS SYSTEMS

Recognizing that Article 10 (Fair Competition) of the U.S.- Fiji Agreement guarantees the airlines of both Parties "a fair and equal opportunity to compete,"

Considering that one of the most important aspects of the ability of an airline to compete is its ability to inform the public of its services in a fair and impartial manner, and that, therefore, the quality of information about airline services available to travel agents who directly distribute such information to the traveling public and the ability of an airline to offer those agents competitive computer reservations systems (CRSs) represent the foundation for an airline's competitive opportunities, and

Considering that it is equally necessary to ensure that the interests of the consumers of air transport products are protected from any misuse of such information and its misleading presentation and that airlines and travel agents have access to effectively competitive computer reservations systems:

1. The Parties agree that CRSs will have integrated primary displays for which:

a. Information regarding international air services, including the construction of connections on those services, shall be edited and displayed based on non-discriminatory and objective criteria that are not influenced, directly or indirectly, by airline or market identity. Such criteria shall apply uniformly to all participating airlines.

b. CRS data bases shall be as comprehensive as possible.

c. CRS vendors shall not delete information submitted by participating airlines; such information shall be accurate and transparent; for example, code-shared and change-of-gauge flights and flights with stops should be clearly identified as having those characteristics.

d. All CRSs that are available to travel agents who directly distribute information about airline services to the traveling public in either Party's territory shall not only be obligated to, but shall also be entitled to, operate in conformance with the CRS rules that apply in the territory where the CRS is being operated.

e. Travel agents shall be allowed to use any of the secondary displays available through the CRS so long as the travel agent makes a specific request for that display.

2. A Party shall require that each CRS vendor operating in its territory allow all airlines willing to pay any applicable non-discriminatory fee to participate in its CRS. A Party shall require that all distribution facilities that a system vendor provides shall be offered on a non-discriminatory basis to participating airlines. A Party shall require that CRS vendors display, on a non-discriminatory, objective, carrier-neutral and market-neutral basis, the international air services of participating airlines in all markets in which they wish to sell those services. Upon request, a CRS vendor shall disclose details of its data base update and storage procedures, its criteria for editing and ranking information, the weight given to such criteria, and the criteria used for selection of connect points and inclusion of connecting flights.

3. CRS vendors operating in the territory of one Party shall be entitled to bring in, maintain, and make freely available their CRSs to travel agencies or travel companies whose principal business is the distribution of travel-related products in the territory of the other Party, if the CRS complies with these principles.

4. Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more stringent requirements with respect to access to and use of communication facilities, selection and use of technical CRS hardware and software, and the technical installation of CRS hardware, than those imposed on its own CRS vendors.

5. Neither Party shall, in its territory, impose or permit to be imposed on the CRS vendors of the other Party more restrictive requirements with respect to CRS displays (including edit and display parameters), operation, or sale than those imposed on its own CRS vendors.

6. CRSs in use in the territory of one Party that comply with these principles and other relevant non-discriminatory regulatory, technical, and security standards shall be entitled to effective and unimpaired access in the territory of the other Party. One aspect of this is that a designated airline shall participate in such a system as fully in its homeland territory as it does in any system offered to travel agents in the territory of the other Party. Owners/operators of CRSs of one Party shall have the same opportunity to own/operate CRSs that conform to these principles within the territory of the other Party as do owners/operators of that Party. Each Party shall ensure that its airlines and its CRS vendors do not discriminate against travel agents in their homeland territory because of their use or possession of a CRS also operated in the territory of the other Party."

This Memorandum of Understanding incorporating amendments to the Air Transport Agreement shall enter into force upon the Exchange of Diplomatic Notes.

The Ministry of Foreign Affairs of Fiji to the American Embassy

MINISTRY OF FOREIGN AFFAIRS
P.O. BOX 2220, GOVERNMENT BUILDINGS,
SUVA, FIJI

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NOTE NO 697/96

The Ministry of Foreign Affairs of the Government of the Republic of Fiji presents its compliments to the Embassy of the United States of America and has the honour to refer to the latter's Note No. 74 of July 10, 1996 the text of which reads as follows:

[For text of the U.S. note, see p. 2.]

The Ministry has the further honour to confirm that the Embassy's above-quoted Note with its attachment and this Note in reply from the Ministry constitute an agreement between the two governments to amend the agreement. The agreement shall enter into force on the date of the Ministry's reply, i.e., August 19, 1996, and shall supersede the Memorandum of Understanding between the Government of the Republic of Fiji and the Government of the United States of America, signed at Washington, October 25, 1985.

The Ministry of Foreign Affairs of the Government of the Republic of Fiji avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Embassy of the United States of America

Loftus Street

Suva

19 August, 1996