



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

Issued by the Department of Transportation
on the 8th day of April, 1998

SERVED: April 9, 1998

Joint Application of

UNITED AIR LINES, INC.
and
LUFTHANSA GERMAN AIRLINES

for blanket statements of authorization under 14 CFR Parts
207 and 212 and renewal of existing statements of
authorization (open skies code-share operations)

Undocketed

ORDER

Summary

By this order, we grant the joint application of United Air Lines, Inc. (United) and Lufthansa German Airlines (Lufthansa) for blanket statements of authorization under 14 CFR Parts 207 and 212 of the Department's regulations and for renewal of existing statements of authorization to the extent necessary to be encompassed by the blanket award, subject to conditions described in this order.¹

Application

On January 26, 1998, United and Lufthansa jointly applied for blanket statements of authorization to engage in certain code-share operations consistent with the open-skies agreement between the United States and the Federal Republic of Germany. Specifically, the joint applicants seek authority under Parts 207 and 212 of the Department's regulations to: (1) enable United to display Lufthansa's "LH" designator code on any flight operated by United between (a) any points within the United States, in conjunction with services held out by Lufthansa between Germany and the United States, (b) any point or points in the United States, on the one hand, and any point or points in Germany, on the other hand (either nonstop or over any intermediate point or points in any country), (c) any point or points in the United States, on the one hand, and any point or points in any third country, on the other hand, and (d) any point or points in Germany, on the one hand, and any point or points in any third country, on the other hand; and (2) enable Lufthansa to display United's "UA" designator code on any flight operated by Lufthansa between (a) any

¹ We are also making certain conforming changes to the statements of authorization held by certain other similarly situated code-sharing partners, as discussed below in this order.

points within Germany, in conjunction with services held out by United between the United States and Germany, (b) any point or points in Germany, on the one hand, and any point or points in the United States, on the other hand (either nonstop or over any intermediate point or points in any country), (c) any point or points in Germany, on the one hand, and any point or points in any third country, on the other hand, and (d) any point or points in the United States, on the one hand, and any point or points in any third country, on the other hand.

The joint applicants state that approval of this application would enable them to expand their code-share services consistent with the open-skies agreement between the United States and Germany and the alliance agreements between United and Lufthansa, approved by Department (Orders 96-5-27 and 96-11-1) and would give them flexibility to respond quickly to service demands and changes in the marketplace without the need of obtaining Department approval to amend their code-share authority each time that they seek to add another third-country beyond point. They state further that they will comply with the applicable Department rules relating to code-share service and with each of the other conditions normally imposed by the Department on code-share arrangements. In addition, the joint applicants seek renewal of their existing Statements of Authorizations, and request that both the blanket authority and the renewals be granted for a period of two years, with the same expiry date.²

Responsive Comments

Northwest Airlines, Inc. (Northwest) and American Airlines, Inc. (American) filed answers to the joint application, stating that they have no objection to the application provided that the Department accords equivalent treatment in similar code-share proceedings and that certain conditions be added with respect to services involving third countries. Northwest states, and American concurs, that the blanket authorization should be subject to the same conditions imposed by the Department when it granted blanket authorizations to the United/SAS and Delta/Swissair/Sabena/Austrian alliances, including the condition that the parties give advance notice before beginning any new code-share services. They urge, however, that the Department make clear that the blanket statement of authorization does not cover code sharing in third-country markets that restrict code sharing and other services by U.S. carriers. Northwest also

² The specific renewals requested are in the following markets: (a) for United, authority to display Lufthansa's designator code between Lufthansa's U.S. gateways and other U.S. points; between Lufthansa's U.S. gateways and Germany (nonstop or via intermediates on blind-sector basis; between Lufthansa's U.S. gateways and Guatemala City/San Salvador/San Jose (C.R.)/Panama City; Chicago/Washington-Mexico City; New York/Miami-Caracas; and Washington-Amsterdam/Brussels/Zurich-Germany (with local traffic rights); and (b) for Lufthansa, authority to display United's designator code between Lufthansa's U.S. gateways and Germany (nonstop or via intermediates on a blind-sector basis); between any two points in Germany; between Germany and Vienna/Prague/Copenhagen/Cairo/Helsinki/Lyon/Nice/Athens/Budapest/Bombay/Delhi/Nairobi/Kuwait City/Warsaw/Moscow/Jeddah/Riyadh/Stockholm/Geneva/Istanbul; between London and Berlin/Hamburg/Munich (with local traffic rights); between Frankfurt and Graz/Olso; between Frankfurt and Baku/Ashkhabad; between Frankfurt and Amsterdam/Brussels/Zurich/Tel Aviv/Gothenberg/Abu Dhabi/Dubai/Karachi/Almaty/Kiev/Minsk/Tashkent/Tallinn/Vilnius/Asmara/Dar es Salaam/Malta/Tunis/Thessaloniki; between Frankfurt and Madras; between Germany and Bucharest; between Frankfurt and Johannesburg/Cape Town/Harare; between Germany and Kiev; between Germany and Riga/Sanaa/Casablanca/Addis Ababa; and between Germany and Amman. (See Application, Attachments 1 and 2 for current expiry dates of the above code-share authority.) To the extent necessary, the joint applicants invoke procedures of 14 CFR Part 377 to continue the effectiveness of their Statements of Authorization under 5 U.S.C. § 558(c), pending action on this application to renew and amend their Statements of Authorization.

argues that if the Department grants the blanket statement of authorization in this request, it should grant comparable statements of authorization whenever the United States and the government of a U.S. airline's foreign partner have signed an open-skies agreement, thus easing the regulatory burden of many U.S. and foreign carriers. American notes that if the Department grants this application, American and its alliance partner Canadian International will seek equivalent treatment consistent with the U.S.-Canada agreement, as amended November 18, 1997.

In its reply, United states that the Joint Applicants have already indicated in their application that they would comply with a condition requiring the carriers to notify the Department 30 days before they begin any code-share service in a new market not previously authorized. However, United states that it believes any selection procedures should be effectuated by giving the 30-day notice required under the blanket authority, rather than by filing a formal application for statement of authorization. United also supports Northwest's position that the Department should have a policy to grant comparable statements of authorization whenever the United States and the government of a U.S. airline's foreign partner have signed an open-skies agreement.

Decision

We have decided to grant the application for blanket code-share authority, subject to certain conditions normally imposed on such authorizations and to additional conditions regarding service to third countries.

We find that grant of the requested authorities is consistent with the public interest. The aviation agreement between the United States and the Federal Republic of Germany provides for the proposed code-sharing operations. We further find that the authority requested would give the applicants flexibility to meet marketplace demands and would enable them to maximize the rights available under the open-skies agreement.³ Consistent with our standard practice in awarding blanket statements of authorization of the type requested here, we will subject the authority granted to certain conditions requiring advance notification of additional markets to be served, compliance with the Department's regulations concerning code-sharing operations, and compliance with the Department's order approving the United/Lufthansa alliance operations.

In addition, we have decided to add further conditions regarding services to third countries as requested by Northwest and American, and unopposed by United and Lufthansa. In our previous awards of blanket authority, it was implicit that services involving third countries where U.S. carrier rights are limited were not automatically authorized under the blanket award, absent further Department procedures. To alleviate any confusion on this issue, we will add a condition, similar to that which we impose on route integration awards, that will make clear that the blanket award does not grant additional limited-entry route authority.⁴

³ Our award here encompasses all the authority for which United and Lufthansa sought renewal in their joint application, except for services involving Mexico as noted in this order. See note 5 *infra*. The Joint Applicants also make reference to certain outstanding applications for statements of authorization for Lufthansa and request that should these additional authorities subsequently be granted their expiry dates be made coextensive with the authorities awarded in this order. We have noted their request.

⁴ As these third-country conditions are equally applicable to the statements of authorization previously granted to United and SAS and to Delta and its alliance partners, we have decided in this order to amend those authorities on our own initiative to include the same conditions.

United has suggested that in terms of service to limited-entry third countries, the 30-day minimum notice already required as a standard condition on the blanket award should be sufficient to trigger the process for any necessary carrier selection procedures and, thus, additional notification is not necessary. We agree in principle with United and see its suggestion as fully consistent with our goal of minimizing the paperwork burden on applicants. Given that the blanket code-share authorization is already subject to a notice requirement, we see no need to impose a second notice requirement here. However, we feel it important to note that the existing notice requirement was primarily intended as an administrative tool to facilitate the Department's monitoring responsibilities over code-share operations, not as a prior-approval requirement. Proposed services to limited-entry countries, on the other hand, would require additional procedures on our part; they cannot be considered as already "approved" and cannot be operated without further Department action. As United itself recognizes, such action may well entail selection among competing carriers. Therefore, we will require United, in using the same notice for both types of operations, to identify separately any proposed services to limited-entry third countries that will require additional Department procedures. Furthermore, we will expect United to allow for the time that may be required for such additional procedures in determining when to file its notice.

Finally, we have decided not to limit the duration of the authority granted here to a specific time period, except as noted below.⁵ Rather, the authority granted will remain in effect, subject to the condition that (1) the carriers continue to hold the necessary underlying economic authority to operate the code-share services, and (2) the alliance agreement under which the code-share operations are conducted remains in effect and approved by the Department. Moreover, as is our normal practice, the authority will be subject to the condition that we may amend, modify, or revoke the blanket authorization at any time without hearing at our discretion. This action will reduce the regulatory burden on the carriers and the Department with respect to renewals, while preserving the Department's flexibility to take action regarding the authorization should circumstances warrant.

ACCORDINGLY,

1. We grant United Air Lines, Inc. a Statement of Authorization under Part 207 of the Department's regulations to enable United to display Lufthansa German Airlines' "LH" designator code on any flight operated by United between (a) any points within the United States, in conjunction with services held out by Lufthansa between Germany and the United States, (b) any point or points in the United States, on the one hand, and any point or points in Germany, on the other hand (either nonstop or over any intermediate point or points in any country), (c) any point or points in the United States, on the one hand, and any point or points in any third country, on the other hand, and (d) any point or points in Germany, on the one hand, and any point or points in any third country, on the other hand;

⁵ Our decision to award the blanket authorization for an indefinite duration will not apply to United's code-share services with Lufthansa involving Mexico. We have recently limited the duration of U.S.-Mexico code-share services based on the Government of Mexico's limited approval of the Northwest/Alaska U.S.-Mexico code-share services. (See Notices of Action Taken, dated March 20, 1998, Dockets OST-97-2477, 97-2944, 97-2481, 97-2961, 97-3237, and 97-3289.) In these circumstances, we are not prepared to grant approval of the United/Lufthansa Mexico code-share operations for a longer period of time.

2. We grant Lufthansa German Airlines a Statement of Authorization under Part 212 of the Department's regulations to enable Lufthansa to display United's "UA" designator code on any flight operated by Lufthansa between (a) any points within Germany, in conjunction with services held out by United between the United States and Germany, (b) any point or points in Germany, on the one hand, and any point or points in the United States, on the other hand (either nonstop or over any intermediate point or points in any country, (c) any point or points in any third country, on the other hand, and (d) any point or points in the United States, on the one hand, and any point or points in any third country, on the other hand.
3. Grant of this authority is limited to code-share operations conducted by United and Lufthansa;
4. Except as otherwise noted in this order, the authorities granted in ordering paragraphs 1 and 2, above, shall be effective immediately and shall remain in effect as long as (a) the carriers' underlying authority to serve the markets at issue remains in effect;⁶ and (b) the underlying alliance agreement remains in effect, and approved by the Department;
5. The code-share operations authorized here for United and Lufthansa are subject to the following additional conditions:
 - (a) United and/or Lufthansa must notify the Department (Office of International Aviation, Room 6412) by letter, no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin;
 - (b) United and/or Lufthansa must notify the Department immediately if the alliance agreement under which these code-share services are operated is no longer in effect, or if the carriers decide to cease operating all or a portion of the code-share services under the alliance;
 - (c) All operations conducted under this authorization must comply with the terms, conditions, and limitations of Order 96-5-27 (United/Lufthansa antitrust immunity order) and any subsequent order(s) of the Department regarding the alliance;
 - (d) All operations must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservations systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (*i.e.*, the ticket), and that the operator shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition; and

⁶ This would include economic authority currently held by the carriers and that which the carriers may hold by subsequent action of the Department.

(e) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (i) nothing in the award of this blanket statement of authorization should be construed as conferring upon United rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier rights are limited unless United notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights;⁷ and (ii) should there be a request by any carrier to use the limited-entry route rights that are included in United's authority by virtue of the blanket statement of authorization granted here, but that are not being used by United, the holding of such authority will not be considered as providing any preference for United in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue;

6. We may amend, modify, or revoke this authority at any time without hearing;

7. We amend the blanket statement of authorization held by United/SAS (granted May 20, 1997) to include the following additional conditions:

(a) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (i) nothing in the award of this blanket statement of authorization should be construed as conferring upon United rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier rights are limited unless United notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights;⁸ and (ii) should there be a request by any carrier to use the limited-entry route rights that are included in United's authority by virtue of the blanket statement of authorization granted here, but that are not being used by United, the holding of such authority will not be considered as providing any preference for United in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue; and

(b) We may amend, modify, or revoke this authority at any time without hearing;

8. We amend the blanket statements of authorization held by Delta-Swissair/Sabena (granted April 30, 1997) and Delta/Austrian (granted April 30, 1997) to include the following additional conditions:

(a) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable

⁷ As discussed in the text of this order and subject to the specifications of that discussion, the notice in ordering paragraph 6(a) above can be used for this notification.

⁸ The 30-day notice requirement that is already applicable to this statement of authorization may be used for this notification as long as it comports with the specifications as discussed in the text of this order.

agreements between the United States and the foreign countries involved. Furthermore, (i) nothing in the award of this blanket statement of authorization should be construed as conferring upon Delta rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier rights are limited unless Delta notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights;⁹ and (ii) should there be a request by any carrier to use the limited-entry route rights that are included in Delta's authority by virtue of the blanket statement of authorization granted here, but that are not being used by Delta, the holding of such authority will not be considered as providing any preference for Delta in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue; and

(b) We may amend, modify, or revoke this authority at any time without hearing; and

9. We will serve this order upon United Air Lines, Inc.; Lufthansa German Airlines; American Airlines, Inc.; Northwest Airlines, Inc.; Delta Air Lines, Inc.; Swissair, Swiss Air Transport Company, Ltd.; Societe Anonyme Belge D'Exploitation de la Navigation Aerienne (SABENA); Austrian Airlines; Scandinavian Airlines System; the Ambassador of the Federal Republic of Germany in Washington DC; the Federal Aviation Administration; and the U.S. Department of State (Office of Aviation Negotiations).

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.30, may file their petitions within ten (10) days after the date of service

⁹The 30-day notice requirement that is already applicable to this statement of authorization may be used for this notification as long as it comports with the specifications as discussed in the text of this order.

of this order. This action was effective when taken, and the filing of a petition for review will not alter its effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

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<http://dms.dot.gov/general/orders/aviation.html>*