

NEW



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

April 6, 1998

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of American Airlines, Inc. filed 6/18/97 in Docket Undocketed for:

XX Statement of Authorization under 14 CFR Part 207 to:

Display Philippine Airlines' "PR" designator code on flights operated by American between the following points:

Los Angeles-Chicago
Dallas/Ft. Worth
Miami
New York(JFK)
Washington

San Francisco-Chicago
Dallas/Ft. Worth
Miami
New York(JFK)

Vancouver-New York(JFK)

Applicant rep: Carl B. Nelson 202-496-5647 DOT analyst: Gerald Caolo 202-366-2406

DISPOSITION

XX *Granted in part,, subject to conditions. (See below)*

XX *Balance (Vancouver-New York) dismissed (See below)*

The above action was effective when taken: April 6, 1998, and will remain in effect indefinitely, subject to the conditions listed below.

XX *Under assigned authority (14 CFR 385) by:*

*Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)*

(See Reverse Side)

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

Remarks: We concurrently issued a Notice of Action Taken approving PAL's application for exemption authority to operate the U.S.-Philippines code-share services approved here (Docket OST-97-2633).

Conditions: The statement of authorization granted is subject to the following conditions:

- (a) The statement of authorization will remain in effect only as long as (i) American and PAL continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.
- (b) American and/or PAL must promptly notify the Department (Office of International Aviation) if the code-share agreement proving for the code-share operations is no longer effective or the carriers cease operating the approved code-share services.
- (c) The code-sharing operations authorized herein 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 reservation systems and elsewhere, and that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept all obligations established in its contract of carriage with the passenger.
- (d) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

Dismissal: We dismissed American's request with respect to the Vancouver-New York (JFK) market, as PAL does not currently hold the necessary underlying economic authority to serve that market.

Pleadings: United filed a consolidated answer to the statement of authorization and PAL's exemption application in Docket 97-2633. American and PAL filed a joint reply and United filed a response to the joint reply of American and PAL.* United argued that the requested authority was extrabilateral because the 1995 Memorandum of Consultations between the United States and the Philippines specifies that code-share operations are limited to designated carriers and American is not designated under the U.S.-Philippine aviation agreement. In addition, United stated that the Department should not grant unilateral and discretionary approval of this code-share since the Philippines has a history of not enforcing the provisions of the agreement, such as the right of U.S. carriers to ground handle non-Philippine carriers at Philippine airports. In this regard, United stated that local airport authorities in the Philippines have not permitted United to self-handle or provide ground handling to other carriers. In these circumstances, and particularly given the specific language of the aviation agreement, United stated that it opposed the requests, unless the Philippines provided assurances that all designated carriers could code-share with non-designated carriers.

* United's response was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion.

American and PAL argued in their reply that PAL's agreement with American does not require extrabilateral authority since PAL has long held the right to code-share with non-designated U.S. carriers and the 1995 MOC should not be construed as restricting this right. They also stated that no other carrier shares United's interpretation and United has not objected to similar applications in the past. Moreover, they stated that even if their request was extrabilateral, the code share should be approved on the basis of reciprocity since U.S. carriers operate more frequencies than Philippine carriers and the two countries have a good aviation relationship. Finally, they stated that United's opposition is an attempt to frustrate the additional competition that PAL would provide by gaining access to American's large U.S. network.

Decision: We decided to grant the requested statement of authorization. Prior to the 1995 MOC (which provided, among other things, for amendment of the code-share provisions of the U.S.-Philippine aviation agreement), both sides interpreted the agreement as requiring them to approve code-share operations of the type requested here. While the code-share language was amended in 1995, neither Party has construed that amendment as derogating from the rights previously available. Since the type of authority at issue here was available under the bilateral regime that prevailed prior to the 1995 amendments, and since the 1995 amendments clearly did not alter that regime as would affect this type of request, we found no basis to withhold the authority requested by American and PAL, or to seek additional assurances from the Philippines regarding the code-sharing provisions of the aviation agreement. Should the Philippines not approve similar arrangements between U.S. and Philippine carriers, we are prepared to reconsider the award of authority granted here.

While we are interested in the groundhandling issue that United has raised, we were unable to conclude on the present record that it provided a persuasive basis to withhold the requested authority. However, we are prepared to explore the issue more fully with United and, should circumstances warrant, to raise the matter directly with the Government of the Philippines.