



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC**

Issued by the Department of Transportation on October 16, 1998

**NOTICE OF ACTION TAKEN -- DOCKET OST 98-3901 and Undocketed**

---

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Application of **Northwest Airlines, Inc. and Air China International Corp.**, filed **6/2/98** and clarified **7/13/98** for:

**XX** Statement of Authorization for Northwest under 14 CFR Part 212, on an indefinite basis:

**To display Air China's "CA" code (a) on Northwest's flights between Detroit and Beijing; and (b) on Northwest's flights in the following U.S. domestic markets to carry Air China's traffic moving between China and the United States:**

**Detroit-Atlanta/Boston/Chicago/Dallas/Ft. Worth/Honolulu/Houston/Las Vegas/Los Angeles/Miami/Minneapolis/St. Paul/New York City/Philadelphia/Phoenix/San Francisco/Seattle/Washington DC**

**Los Angeles-Atlanta/Boston/Chicago/Dallas/Ft. Worth/Detroit/Honolulu/Houston/Las Vegas/Miami/Minneapolis/St. Paul/New York City/Philadelphia/Phoenix/San Francisco/Seattle/Washington DC**

**San Francisco-Atlanta/Boston/Chicago/Dallas/Ft. Worth/Detroit/Honolulu/Houston/Las Vegas/Los Angeles/Miami/Minneapolis/St. Paul/New York City/Philadelphia/Phoenix/Seattle/Washington DC**

**XX** Exemption for two years for Air China under 49 U.S.C. 40109(c) to provide the following services:

**Scheduled foreign air transportation of persons, property, and mail between Beijing, Shanghai, and Guangzhou, on the one hand, and Anchorage, Atlanta, Boston, Dallas/Ft. Worth, Detroit, Fairbanks, Houston, Las Vegas, Miami, Minneapolis/St. Paul, Philadelphia, Phoenix, Seattle, and Washington DC, on the other. These services would be operated under a code-share arrangement with Northwest Airlines.**

**XX** Statement of Authorization for Air China under 14 CFR Part 212, on an indefinite basis:

**To display Northwest's "NW" code on Air China's flights between Beijing and Shanghai, on the one hand, and San Francisco and Los Angeles, on the other.**

Delta Air Lines, Inc. filed an answer stating that under the provisions of the U.S.-China bilateral air service agreement, Chinese airlines may code-share with U.S. airlines between gateway points named in the agreement and a total of 10 additional points in the United States and that the Northwest/Air China application would use all ten of the code-share only points available under the agreement. Delta noted that it also has pending an application for code-sharing with its partner China Southern. Delta argued that given the current limitation of ten code-share only points in the United States, there would not be sufficient opportunities to accommodate its own request with China Southern and, therefore, that Delta opposed the Northwest/Air China application to the extent it seeks to serve points other than those named by Delta. Delta urged the Department to pursue with China an expansion of the number of code-share only points available for service in the United States.

(See Reverse Side)

Northwest filed a reply agreeing with Delta that the Department should pursue with China an expansion of the number of code-share only points, but argued that Delta provided no proper basis for the Department to delay granting the authority that Northwest and Air China have requested. Northwest maintains that it is seeking authority to serve certain U.S. cities on a code-share only basis to the extent those cities are selected by China and if China does not ultimately select one or more cities identified by Northwest/Air China, then Northwest and Air China simply would not be authorized to provide service to those points.

Applicant reps: Megan Rae Poldy (202) 842-3193 DOT Analyst: Linda Senese (202) 366-2367

#### DISPOSITION

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

XX Balance dismissed

The above action regarding the Air China exemption request was effective when taken: October 16, 1998 through October 16, 1999.

The actions above regarding the Statements of Authorization for Northwest and Air China were effective when taken: October 16, 1998, and will remain in effect indefinitely, subject to the conditions listed below.

XX By:

**Charles A. Hunnicutt**  
**Assistant Secretary for Aviation**  
**and International Affairs**

XX The authority granted is consistent with the aviation agreement between the United States and the People's Republic of China.

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 (Northwest) or foreign air carrier permit (Air China)  
XX Standard Exemption Conditions (Air China)(attached)

**Remarks:** We found that grant of this authority is consistent with the public interest. The Memorandum of Understanding, initialled December 23, 1995, between the United States and the People's Republic of China provides that designated Chinese airlines may code share between named gateway points and a total of ten additional points in the United States to be selected by the Government of China, as well as between named gateway points. It also provides that the People's Republic of China may name additional gateway points. On August 4, 1998, we were notified of the Chinese Government's selection of code-share only points as well as three additional U.S. gateway cities for Chinese carrier services. All of the points requested by the Northwest/Air China application are encompassed by either the code-share only points selected or gateway points specified under the aviation agreement. In light of the Chinese Government's selections, we found no basis to withhold approval of the Northwest/Air China application as proposed by Delta. At the same time, in taking our action we were cognizant that the points selected by the Chinese Government were not reserved exclusively for the Northwest/Air China code share, but in fact could be used by other Chinese and U.S. code-share partners.

In granting Air China the requested exemption authority, we found the applicant qualified to perform the proposed services. Consistent with our standard practice for this type of application, we granted Air China exemption authority for a period of one year, and dismissed its request for longer-term authority.

**Conditions:**

(a) The statement of authorization will remain in effect only as long as (i) Northwest Airlines, Inc. and Air China International Corp. continue to hold the necessary underlying authority to operate the code-share services at issue, (ii) the code-share agreement providing for the code-share operations remains in effect, and (iii) the representations made in the July 13, 1998, letter to the Department clarifying terms in the Agreement reflect an accurate assessment of the code-share arrangement.

(See next page)

(b) Northwest and/or Air China must promptly notify the Department (Director, Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services.<sup>1</sup>

(c) The code-sharing operations conducted under this authority 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; 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; that the passenger liability of the operating carrier be unaffected; and that the operating carrier 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.

(d) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

In addition to our standard conditions, above, we decided to further condition our approval of the requested statement of authorization to preclude the carriers from exercising the exclusivity provisions (section 10) of the commercial cooperation agreement, dated May 12, 1998, to the extent that they would prevent Northwest and Air China from entering into cooperative service arrangements with U.S. and Chinese air carriers that have not been designated to provide combination services in the U.S.-China market. We concluded that such a condition is necessary to maximize competition in this limited-entry market.

*An electronic version of this document is available on the World Wide Web at:  
<http://dms.dot.gov/general/orders/aviation>.*

---

<sup>1</sup> We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
  - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
  - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).