

NEW



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

## NOTICE OF ACTION TAKEN

**October 23, 1998**

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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 **Delta Air Lines, Inc.** filed **8/21/98** in Docket **OST-98-4355** for:

**XX** Exemption under 49 U.S.C. 40109 to provide the following service:

**Scheduled foreign air transportation of persons, property, and mail between any point or points in the United States and any point or points in Japan pursuant to code-share arrangements with a carrier or carriers of a third country or countries on a blind sector basis. Initially, Delta intends to operate service between the United States and Fukuoka, Nagoya, Osaka, Tokyo, and Sapporo pursuant to a code-share arrangement with Korean Air Lines Co. Ltd. (KAL). Delta also seeks to integrate this authority with its existing exemption and certificate authority.**

Northwest Airlines, Inc. filed an answer to Delta's application; and Delta filed a reply.

Northwest does not oppose Delta's request, but stated that the broad scope of the request raised policy issues that the Department should consider. Northwest specifically noted that, under the U.S.-Japan Memorandum of Understanding, a U.S. carrier's right to operate third-country code-share services is not absolute. Rather, it is dependent on the status of the code-share relationship between the United States and the third country and on whether the third country affords comparable code-share rights to Japanese carriers. If the Department grants Delta's request, Northwest stated that the Department should make clear that the authority is for code-share services only and is subject to applicable bilateral restrictions and the Department's normal regulatory requirements. Finally, Northwest stated that the Northwest/Continental application for additional code-share frequencies on all eligible U.S.-Japan routes should be granted before Delta's application.

Delta asserted in its reply that Delta's request is fully consistent with the U.S.-Japan Memorandum of Understanding and is comparable to authority already granted to Northwest and to United to operate code-share services with their third-country code-share partners. In these circumstances, Delta argued that there was no basis to award unlimited third-country code-share authority to Northwest and United while restricting Delta's authority. Delta further argued that the fact that third-country code-share rights are subject to reciprocity with the qualifying country provides no basis to limit Delta's authority. Finally, Delta maintained that there was no basis to impose additional conditions on Delta's authority as Part 212 of the Department's regulations requires that the operating airline obtain a statement of authorization for the code-share operations.

Applicant rep: **Robert E. Cohn 202-663-8060** DOT analyst: **Terri Bingham 202-366-2390**

(See Reverse Side)

## DISPOSITION

**XX** Granted (subject to conditions, see below)

The above action was effective when taken: October 23, 1998, through October 23, 2000

**Action taken 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)**

**XX** Exemption Authority granted is consistent with the April 20, 1998 U. S.-Japan Memorandum of Understanding

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

**XX** Standard Exemption Conditions (attached)

**XX** U.S.-Japan Memorandum of Understanding effective April 20, 1998

**XX** Statement of Authorization for Delta/KAL code-share operations dated August 6, 1998, and conditions therein

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**Conditions:** The route integration authority requested is granted subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Delta rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Delta notifies us of its intent to serve such a market and unless and until the Department has completed any necessary selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) 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 route integration exemption granted here, but that are not then being used by Delta, the holding of such authority by route integration 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.

The authority granted to serve intermediate and beyond points in conjunction with Japan service is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority by virtue of this action or other action of the Department, and all conditions attached to that authority.

The exemption authority granted is subject to the condition that all operations provided under the authority are operated on a code-share basis with an authorized third-country code-share carrier.

**Remarks:** Except to the extent of the conditions included in this notice, we found no basis to impose additional conditions on the underlying operating authority granted to Delta for U.S.-Japan third-country code-share services. The operations proposed are fully consistent with the U.S.-Japan Memorandum of Understanding. Furthermore, to the extent that Delta plans services with other third-country code-share partners, such third-country carriers must first obtain the necessary authorization from the Department.

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Should there be any reciprocity or other public interest concerns with respect to such partners, these concerns can be considered at that time.

With respect to Northwest's concern about its joint application with Continental, we note that we have contemporaneously granted that application. See Notice of Action Taken, Docket OST-98-4364.

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

## APPENDIX A

### **U.S. CARRIER** **Standard Exemption Conditions**

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.