

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.

Joint Application of **Northwest Airlines, Inc. and Continental Airlines, Inc.** filed **8/25/98** in Docket **OST-98-4364** for:

**XX** Allocation of 14 weekly same-country code-share frequencies to provide the following service:

**Scheduled combination air services between any point in the United States and any point in Japan consistent with the provisions of the U.S.-Japan Memorandum of Understanding entered into force on April 20, 1998.**

Application of **Continental Airlines, Inc.** filed **8/25/98** in Docket **OST-98-4364** 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 under a code-share arrangement with Northwest Airlines, Inc., consistent with the provisions of the U.S.-Japan Memorandum of Understanding entered into force on April 20, 1998.**

American Airlines, Inc. filed an answer to the application; the City of Chicago and Continental and Northwest (jointly) filed replies. American urges the Department to defer action on the application, stating that American has begun negotiations with potential U.S. carrier partners and hopes to be in a position to file a competing application soon. American also stated that Northwest and Continental did not file a complete application since they did not indicate what markets they would operate their proposed code-share services. Chicago filed in support of American's position.

Northwest and Continental asserted in their reply that other carriers, including American, have had a sufficient opportunity to present competing proposals; that none has been filed, and, thus, that there is no reason to delay action on the Northwest/Continental application. They further argued that their application is not procedurally deficient since they clearly stated in the application that they intended to use the frequencies in all markets eligible under the U.S.-Japan MOU.

Applicant reps: **Megan Rae Poldy (202) 842-3193 (Northwest)** DOT Analyst: **Terri Bingham (202) 366-2390**  
**R. Bruce Keiner (202) 624-2615 (Continental)**

### DISPOSITION

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

The above action with respect to Continental's exemption authority was effective when taken: **October 23, 1998,** through **October 23, 2000;** The above action with respect to the joint frequency award was effective when taken **October 23, 1998,** and will remain in effect indefinitely provided that the carriers continue to hold the underlying authority for the authorized services, subject to the conditions noted below.

**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)**

(See Reverse Side)

**XX The authority granted is consistent with the April 20, 1998 Memorandum of Understanding between the United States and Japan.**

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

**XX Holders' certificates of public convenience and necessity**

**XX Standard Exemption Conditions (attached)**

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

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**Special Conditions:** The authority granted was made subject to the following conditions:

- (a) The exemption authority granted to Continental is subject to the condition that all operations provided under the authority are operated on a code-share basis with Northwest and that all operations are conducted within the level of services authorized Northwest and Continental for U.S.-Japan same-country code-share services.
- (b) The frequency allocation granted is subject to the condition that the allocation will expire automatically and the frequencies will revert to the Department if they are not used for a period of 90 days.
- (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; and that the passenger liability of the operating carrier be unaffected.

**Remarks:** It is the Department's policy not to permit valuable limited-entry route rights go unused, particularly when a carrier has presented firm plans to use them. In this case, Northwest and Continental formally applied for and presented plans to use the available frequencies and have stated that they are prepared to begin the proposed services expeditiously (Joint Application at 5). American, on the other hand, has submitted no competing application for the available frequencies. Nor has it presented a firm proposal to use them. In these circumstances, and consistent with our stated policy, we determined that it was not in the public interest to defer action on the Northwest/Continental application as American had requested.

While we have awarded Continental broad U.S.-Japan exemption authority to provide the carriers the maximum flexibility possible in operating their code-share services consistent with the frequency limitations imposed on that service, we note that the provisions of the U.S.-Japan MOU relevant to same-country code-share operations include certain limitations on the markets that may be served. Therefore, to alleviate any confusion as to the scope of Continental's authority, we have specifically subjected the authority awarded to the terms, conditions, and limitations of the MOU.

**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.