



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

Issued by the Department of Transportation on February 18, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-4994

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 American Airlines, Inc. and Japan Airlines Co., Ltd., filed 1/11/99 in Docket OST-99-4994 and Undocketed for:

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

Scheduled foreign air transportation of persons, property, and mail between:

- (1) a point or points in Japan and a point or points in the United States, either nonstop or via an intermediate point or points in third countries;
- (2) any two points in Japan, limited to traffic originating or terminating outside Japan;
- (3) a point or points in the United States and a point or points beyond the United States; and
- (4) a point or points in Japan and a point or points beyond Japan, on a blind-sector basis.

American also requests authority to integrate this authority with its existing certificate and exemption authority to engage in foreign air transportation. American intends to operate this service under a code-share agreement with Japan Airlines on flights operated by Japan Airlines.

XX Statement of Authorization under 14 CFR Part 212 for Japan Airlines to:

Display American Airlines' "AA" designator code on flights operated by Japan Airlines on all four routes described above.

XX Statement of Authorization under 14 CFR Part 212 for American Airlines (and its regional affiliates American Eagle Airlines and Executive Airlines d/b/a American Eagle) to:

Display Japan Airlines' "JL" designator code on flights operated by American Airlines between the following:

- (1) a point or points in the United States and a point or points in Japan, either nonstop or via an intermediate point or points in third countries;
- (2) any two points in the United States, limited to traffic originating or terminating outside the United States;
- (3) a point or points in the United States and a point or points beyond the United States.

United Airlines filed an answer stating that it supports the applications, provided that any authority granted is subject to the same conditions as those imposed on the existing code-share authority held by United and All Nippon Airways. (See United/ANA statement of authorization granted August 7, 1998.) United also stated that the Department recently decided that all code-share applications should now be filed in the public docket, and thus, that the Department should also require that the 30-day code-share notifications for new service, included in the

Department's standard code-share conditions, should also be filed in the public docket by all carriers, including American here. American and Japan Airlines in their joint reply stated that all the issues raised by United involve standard conditions imposed by the Department in award of code-share authority, and that American and Japan Airlines in their application made clear that they would accept and comply with all such standard conditions. American and Japan Airlines also stated that they would accept and comply with any condition imposed by the Department requiring that 30-day advance notices on new code-share operations be docketed.

Applicant reps: Carl B. Nelson, Jr., (202) 496-5647--AA DOT Analyst: Gerald Caolo (202) 366-2406
William Karas, (202)-429-6223-----JAL

DISPOSITION

XX Granted (subject to conditions, see below)

The exemption authority granted was effective when taken: February 18, 1999, through February 18, 2001

The statements of authorization granted were effective when taken: February 18, 1999, and will remain in effect indefinitely, subject to the conditions listed below:

Action taken by: Paul L. Gretch, Director
Office of International Aviation

XX Authority granted is consistent with the 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 Holder's Foreign Air Carrier Permit (Japan Airlines)**
- XX Holder's Certificate of Public Convenience and Necessity (American)**
- XX Standard Exemption Conditions (attached)**

Remarks: Regarding the issues raised by United, we have granted the authority here subject to the standard conditions that we impose on statements of authorization. Furthermore, we have amended our standard conditions regarding the filing of 30-day notices for new code-share services (condition (2) below, applicable to the granted statements of authorization) to require that such notices be filed in the applicable application docket. As noted by the parties, the Department recently amended Part 212 to require that all code-share applications be filed in the public docket. The amended rule is effective February 22, 1999. Given the clear intent underlying this new rule, we will place the American/Japan Airlines code-share application in Docket OST-99-4994 and will require that all code-share notices filed pursuant to the authority granted here be filed in that docket.¹

Conditions: The exemption authority granted to American is subject to the following conditions:

- (1) Any service provided under the route integration authority granted shall be consistent with all applicable agreements between the United States and the foreign countries involved, and further (a) nothing in our award of the route integration authority granted should be construed as conferring upon American rights (including fifth-freedom, intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless American 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, and (b) should there be a request by any carrier to use the limited-entry route rights that are included in American's

¹ American and Japan Airlines have agreed to accept such a condition. Regarding the issue of whether 30-day notices relating to previously filed code-share applications need to be filed in a docket, we will address this matter in a separate notice. We noted that United has agreed to such a requirement for its previously authorized code-share services.

authority by virtue of the route integration exemption granted here, but that are not then being used by American, the holding of such authority by route integration will not be considered as providing American a preference in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

- (2) The authority granted to operate via intermediate points and beyond Japan to third countries shall be limited to blind-sector operations only.
- (3) The authority granted to operate to third countries 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 either the present action or other action of the Department.
- (4) The authority granted is limited to code-share operations with Japan Airlines on flights operated by Japan Airlines.

The statements of authorization granted here to American Airlines and Japan Airlines are subject to the following conditions:

- (1) The statements of authorization will remain in effect as long as (i) American and Japan Airlines 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.²
- (2) American and/or Japan Airlines must notify the Department 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. Such notices should be filed in Docket OST-99-4994.
- (3) American and/or Japan Airlines must promptly notify the Department 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.³ Such notices should be filed in Docket OST-99-4994.
- (4) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is 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 responsibility for the entirety of the code share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. Further, the operating carrier shall not permit the code of its U.S. air carrier 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.
- (5) The authority granted to operate to third countries is subject to the condition that any service provided shall be consistent with all applicable agreements between the United States and Japan, and all agreements with other foreign countries involved. Furthermore, (a) nothing in the award of this blanket statement of authorization should be construed as conferring upon American rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier rights are limited unless American notifies us of its intent to serve such market and unless and until the Department has completed any necessary carrier selection procedures to

² We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently decide to amend their code-share agreement to include any provision relating to an exclusive arrangement between the parties, that amended language must first be submitted for consideration by the Department.

³ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

determine which carrier(s) should be authorized to exercise such rights;⁴ and (b) should there be a request by any carrier to use the limited-entry route rights that are included in American's authority by virtue of the blanket statement of authorization granted here, but that are not then being used by American, the holding of such authority will not be considered as providing any preference for American in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(6) The authority granted here is specifically conditioned so that neither American nor Japan Airlines shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

(7) The U.S.-Japan combination services operated by American carrying Japan Airlines' code must be operated within the level of services authorized American for U.S.-Japan combination services.

On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp.*

⁴ The notice referenced in condition (2) above may be used for this notification, *provided that*, any such operations cannot be operated without further Department action, and any such operations must be identified in the notice filed by American.

APPENDIX

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 (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.