



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

Issued by the Department of Transportation on June 21, 1999

NOTICE OF ACTION TAKEN -- DOCKETS OST-99-5588 AND 99-5590

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).

Application of Trans World Airlines, Inc. filed 4/27/99 in Docket OST-99-5588:

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

Scheduled foreign air transportation of persons, property and mail between Chicago, Illinois, on the one hand, and Kuwait City, Kuwait; Abu Dhabi and Dubai, United Arab Emirates; and Muscat, Oman, on the other hand. Trans World intends to operate this service under a code-share arrangement with Kuwait Airways. Trans World also request authority to integrate this authority with its certificate authority on Route 147.¹

Joint Application of Trans World Airlines, Inc., and Kuwait Airways Corporation. filed 4/27/99 in Docket OST-99-5590:

XX Statement of Authorization under 14 CFR Part 212 for Trans World to:

Display Kuwait Airways' "KU" designator code on flights operated by Trans World between New York, on the one hand, and Los Angeles, St. Louis, San Francisco and Washington, DC, on the other hand, and between St. Louis and Chicago for the carriage of Kuwait Airways' international traffic between Kuwait and the United States.

XX Statement of Authorization under 14 CFR Part 212 for Kuwait Airways to:

Display Trans World's "TW" designator code on flights operated by Kuwait Airways (a) between New York and Chicago, on the one hand, and Kuwait City, on the other hand, and (b) between Kuwait City, on the one hand, and Abu Dhabi, Dubai and Muscat, on the other hand, for the carriage of Trans World's U.S.-United Arab Emirates/Oman traffic.²

Applicant reps Richard J. Fahy (TW) (703) 684-4422
2406

DOT Analyst: Gerald Caolo (202) 366-

¹ Trans World's authority on Route 147 generally authorizes service between New York and St. Louis, on the one hand, and countries in Europe, the Middle East, Asia and Africa, on the other hand. See Orders 89-8-30, 90-6-44, 91-1-72, 91-4-47 and 92-4-49.

² Trans World holds the necessary underlying authority to serve the New York-Kuwait/United Arab Emirates/Oman markets on Route 147.

Henry C. Cashen, II (KU) (202)-785-9700**DISPOSITION**

XX Granted (subject to conditions, see below)

The exemption authority granted was effective when taken: **June 21, 1999**, through **June 21, 2001**.

The statement of authorization was effective when taken: **June 21, 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 aviation agreement between the United States and United Arab Emirates, and consistent with the overall state of aviation relations between the United States and Kuwait, and between the United States and Oman.

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 (Trans World)

XX Holder's Foreign Air Carrier Permit (Kuwait Airways)

XX Standard Exemption Conditions (attached)

Conditions: The statements of authorization granted here to Trans World and Kuwait Airways are subject to the following conditions:

- (1) The statements of authorization will remain in effect only as long as (i) Trans World and Kuwait Airways 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.³
- (2) Trans World and/or Kuwait Airways 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.⁴ (Such notices should be filed in Docket OST-99-5590.)
- (3) 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; 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.
- (4) The authority granted here is specifically conditioned so that neither Trans World nor Kuwait Airways shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

³ 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.

⁴ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

The route integration authority granted Trans World is 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 Trans World rights (including fifth- freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Trans World 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 Trans World's authority by virtue of the route integration exemption granted here, but that are not then being used by Trans World, the holding of such authority by route integration will not be considered as providing any preference for Trans World in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

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.

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http://dms.dot.gov/reports/reports_aviation.asp

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.