



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

Issued by the Department of Transportation on May 11, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5549

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 Alaska Airlines, Inc. and Air China International Corp. filed 4/16/99 for:

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

To display Air China's airline designator code ("CA") on certain flights operated by Alaska Airlines between Los Angeles and San Francisco, on the one hand, and Portland, Seattle, and Anchorage, on the other hand, and between Los Angeles and San Francisco, for the carriage Air China's China-U.S. traffic.

XX Exemption for two years for Air China International Corp. under 49 U.S.C. § 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Beijing, Shanghai, and Guangzhou, China, on the one hand, and Portland, Oregon, on the other hand.¹ Air China intends to operate this service under a code-share arrangement with Alaska Airlines.

On May 3, 1999, United Air Lines, Inc. filed an answer stating that the exclusivity provisions in the Alaska/Air China agreement are similar to those in the Northwest/Air China code-share agreement and that United adopts its petition for reconsideration in Docket OST-98-3901 as its answer in this proceeding. Specifically, United contends that the Department should allow carriers to enforce their exclusivity provisions as agreed without imposition of conditions on them and that should conditions be imposed, they should be applied consistently.

Applicant rep: Marshall S. Sinick/Edward W. Sauer (202) 626-6651

DOT Analyst: Linda W. Senese (202) 366-2367

(See Reverse Side)

¹ The applicants state that they also plan to code-share on flights in the Los Angeles/San Francisco-Seattle and Los Angeles-Anchorage markets on flights operated by Alaska Airlines. Air China obtained the necessary underlying authority to serve the Seattle and Anchorage-China markets in Docket OST-98-3901.

DISPOSITION

XX Granted, in part, subject to conditions (see below).

XX Balance dismissed (Air China request for longer-term exemption authority).

The above action regarding the Air China exemption request was effective when taken: **May 11, 1999**, through **May 11, 2000**.

The above action regarding the Statement of Authorization for Alaska was effective when taken: **May 11, 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 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 (Alaska) and foreign air carrier permit

(Air China)

XX Standard Exemption Conditions (Air China) (attached)

Remarks: We find that approval of the proposed code-share operations, subject to the conditions below, is in the public interest. The operations proposed are fully consistent with the U.S.-China aviation agreement and will expand the services available to the public for service in the U.S.-China market. Our approval is subject to our standard conditions on code-share services, noted below. In addition, as discussed below, we will partially condition Alaska's statement of authorization with respect to exclusive dealings between the parties.

The Alaska/Air China Commercial Cooperation Agreement dated May 12, 1998, incorporates by reference the provisions of a Northwest/Air China code-share agreement which we recently addressed in a separate action (See Order 99-5-2), and makes clear that the operations by Alaska and Air China (as well as the code-share operations by Northwest's other partners, Continental Airlines and America West Airlines) are not separate, but rather, an adjunct of the Northwest/Air China code-share operations. Therefore, consistent with the Department's findings in Order 99-5-2, we will apply the same conditions imposed on the Northwest/Air China exclusivity provisions, as modified by Order 99-5-2, to the Alaska/Air China exclusivity provisions at issue here.

With respect to the comments filed by United, the issues raised in its pleading were fully addressed in Order 99-5-2.

In granting Air China the requested exemption authority, we found the applicant qualified to perform the proposed services.

Dismissal: Consistent with our standard practice for this type of application, we granted Air China's exemption authority for a period of one year, and dismissed the request for longer-term authority.

Statement of Authorization Conditions:

- (a) The statement of authorization will remain in effect only as long as (1) Alaska Airlines and Air China International Corp. continue to hold the necessary underlying authority to operate the code-share services at issue, and (2) the code-share agreement providing for the code-share operations remains in effect.
- (b) Alaska and/or Air China 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.² (Such notices should be filed in the Docket OST-99-5549.)
- (c) The code-share 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.³ 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 reservations 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.
- (d) The authority granted here is specifically conditioned so that neither Alaska nor Air China shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.
- (e) The authority granted here is specifically conditioned so that neither Alaska nor Air China shall give any force or effect to any exclusivity provision of their Agreement (Section 10 of the Commercial Cooperation Agreement dated May 12, 1998), to the extent to which they would prevent Alaska and Air China from entering into code-share arrangements with U.S. or Chinese air carriers that have not been designated to provide combination services in the U.S.-China market.

We may amend, modify, or revoke this authority at any time without hearing.

The filing of a petition for review shall not preclude the effectiveness of this action.

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

² We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

³ On March 8, 1999, the Department adopted a new regulation, Part 257, governing code-share operations. That regulation becomes effective on July 13, 1999.

FOREIGN AIR CARRIER 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 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).

(41301/40109) 9/98