



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on July 23, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5837

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).

Applicant: **Japan Air System Company, Ltd. & Northwest Airlines, Inc.** Date Filed: June 11, 1999

Relief requested:

Japan Air System-- Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail between any point or points behind Japan via any point or points in Japan and any intermediate point or points and any point or points in the U.S. and any point or points beyond.

Japan Air System--Statement of authorization under 14 CFR Part 212 to display Northwest's designator code (NW) on flights operated by Japan Air System on the routes as follows:

- (a) between 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;
- (b) between points in Japan limited to traffic originating or terminating outside Japan;
- (c) between a point or points in the United States and a point or points beyond the United States; and
- (d) between a point or points in Japan and a point or points beyond Japan, on a blind-sector basis.

Northwest Airlines--Statement of authorization under 14 CFR Part 212 to display Japan Air System's designator code (JD) on flights operated by Northwest as follows:

- (a) between 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;
- (b) between points in the United States, limited to traffic originating or terminating outside the United States;
- (c) between a point or points in Japan and a point or points beyond Japan; and
- (d) between a point or points in the United States and a point or points beyond the United States, on a blind sector basis.

If renewal, date and citation of last action: New authority

Applicant representative: Anne D. Smith--(202) 626-3651 (Japan Air System)

Megan Rae Poldy--(202) 842-3193 (Northwest)

Responsive pleadings: None filed

DISPOSITION

Action: Approved In Part/Dismissed In Part¹

Action date: July 23, 1999

Effective dates of the exemption authority granted Japan Air System—July 23, 1999-July 23, 2000

The statements of authorization granted to were effective when taken July 23, 1999 and will remain in effect indefinitely, subject to the conditions listed below:

Basis for approval (bilateral agreement/reciprocity): 1998 Memorandum of Understanding between the United States and Japan (1998 MOU)

¹ We dismiss JAS' request for a statement of authorization under paragraph (a) to the extent that it involves other than non-stop services between Japan and the United States and all of JAS' request under paragraph (c) because such rights are not provided for under the 1998 MOU.

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

X Japan Air System--Order 91-9-26 and the 1998 MOU

X Northwest Airlines--Certificate of Public Convenience and Necessity

Special conditions/Partial grant/Denial basis/Remarks:

The exemption authority granted to Japan Air System, in addition to the conditions described above, is subject to the following conditions:

- (a) The authority granted to operate via intermediate points and beyond the United States to third countries shall be limited to blind-sector operations only.
- (b) The authority granted is limited to code-share operations with Northwest Airlines on flights operated by Northwest Airlines.

The statements of authorization granted to Japan Air System and Northwest Airlines are subject to the following conditions:

- (a) The statement of authorization will remain in effect only as long as (i) Japan Air System and Northwest 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.
- (b) Japan Air System and/or Northwest 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-99-5837.
- (c) Japan Air System and/or Northwest Airlines must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. We expect this notification to be received within 10 days of such non-effectiveness or of such decision. Such notices should be filed in Docket OST-99-5837.
- (d) 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.² 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. carrier code-sharing partner to be carried on any flight that enters, departs or transits the airspace of any area whose airspace the Federal Aviation Administration has issued a flight prohibition.
- (e) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (i) nothing in the award of this blanket statement of authorization should be construed as conferring upon Northwest rights (including code-share, fifth freedom intermediate or beyond rights) to serve markets where U.S. carrier rights are limited unless Northwest 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;³ and (ii) should there be a request by any carrier to use the limited-entry route rights that are included in Northwest's authority by virtue of the blanket statement of authorization granted here, but

² On March 8, 1999, the Department issued Part 257 (14 CFR Part 257) governing code-sharing operations. That regulation will now become effective on August 25, 1999. (See Federal Register 59416, July 15, 1999)

³ The notice in paragraph (c) above can be used for this notification.

are not being used by Northwest, the holding of such authority will not be considered as providing any preference for Northwest in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue here.

(f) The authority granted here is specifically conditioned so that neither Japan Air System nor Northwest Airlines shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.⁴

(g) The U.S.-Japan services operated by Japan Air System carrying Northwest's code must be operated within the level of services authorized Japan Air System for U.S.-Japan services.

(h) Northwest and JAS must notify the Department of the number of weekly frequencies operated in gateway-to-gateway markets under the code-share services authorized here. This information will enable the Department to determine whether the United States is entitled to additional U.S.-Japan gateway-to-gateway frequencies for same country carrier codesharing (see Part IV, E.8. of the 1998 MOU).⁵

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

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) immediate action was required and was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) 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/deferred/dismissed, 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 We note the code-share agreement as submitted did not include provisions regarding exclusive dealings between code-share parties. Should the parties subsequently decide to amend their code-share agreement or any other agreement between them to include any provision relating to an exclusive arrangement between the parties regarding their code-share services, that amended language must first be submitted for consideration by the Department.

⁵ We expect this notification within thirty days after commencement of the code-share services and within thirty days after any change in the level of services operated.