



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

Issued by the Department of Transportation on March 30, 2000

NOTICE OF ACTION TAKEN -- DOCKET OST-2000-7074

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: **All Nippon Airways Co., Ltd & Air Canada**

Date Filed: March 14, 2000

Relief requested:

All Nippon Airways--Statement of authorization under 14 CFR Part 212 to display Air Canada's designator code ("AC") on scheduled combination flights operated by All Nippon Airways between any point or points in the United States and any point or points in Japan and points beyond Japan.¹

Air Canada--Statement of authorization under 14 CFR Part 212 to display All Nippon Airways' designator code ("NH") on scheduled combination flights operated by Air Canada between any point or points in the United States and any point or points in Canada and points beyond Canada.²

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

Applicant representatives: James L. Devall (for ANA) & Richard D. Mathias (for Air Canada) (202) 298-8660

Responsive pleadings: Delta Air Lines, Inc. filed an answer in response to the joint application stating that while it does not object in principle to the proposed services, which Delta acknowledges are consistent with our aviation agreements with Japan and Canada, it urges us to pursue assurance from the Government of Japan that similar U.S. carrier codeshare requests to serve Japan will receive "prompt and favorable" consideration. Delta states that during 1998, the Government of Japan "unreasonably and unnecessarily" delayed a request by Delta to conduct third-country codeshare services to Japan through Delta's codeshare arrangement with Korean Air Lines (KAL). The joint applicants filed a reply stating that at the time of Delta's proposed codeshare service with KAL, the Government of Japan did not have a third-country codeshare agreement with Korea.

DISPOSITION

Action: Approved

Action date: March 30, 2000

Effective dates of authority granted: March 30, 2000-Indefinite

Basis for approval (bilateral agreement/reciprocity): 1998 Memorandum of Understanding between the United States and Japan and the Air Transport Agreement between the United States and Canada (including the Agreed Minute between the United States and Canada, signed November 18, 1997).

¹ Air Canada's service will be operated on a blind-sector basis with no local traffic carried under Air Canada's code between the United States and Japan.

² All Nippon's service will be operated on a blind-sector basis with no local traffic carried under All Nippon's code between the United States and Canada.

Remarks: We are sensitive to the concerns raised by Delta and are prepared to defend the rights available to U.S. carriers under the 1998 Memorandum of Understanding between the United States and Japan (1998 MOU). Having said that, we do not believe that delaying approval of the joint application would be in the public interest.

The authority granted is subject to the following conditions:

- (a) The statements of authorization will remain in effect only as long as (i) All Nippon Airways and Air Canada continue to hold the necessary 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) All Nippon Airways Co., Ltd. and/or Air Canada must promptly notify the Department (Office of International Aviation) 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.³
- (c) All Nippon Airways and/or Air Canada 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 notice should be filed in Docket OST-2000-7074.
- (d) The code-sharing operations conducted under this authority must comply with 14 CFR 257 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.
- (e) The authority granted here is specifically conditioned so that neither All Nippon Airways nor Air Canada shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

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 grant of the authority was in the public interest. 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

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