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

Issued by the Department of Transportation on August 28, 2002

**NOTICE OF ACTION TAKEN -- DOCKET OST-2002-13215-4**

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 Continental Airlines, Inc. filed 8/21/02 to:

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

**Scheduled foreign air transportation of mail between any point or points in the United States and any point or points in New Zealand, and between any point or points in the United States or New Zealand and any point or points in any third country. Continental also requests authority to integrate this authority with its existing certificate and exemption authority. Continental intends to operate this service under a code-share arrangement with Air New Zealand whereby Continental will place its code on flights operated by Air New Zealand.**

Application of Air New Zealand Limited filed 8/21/02 for:

**XX** Statement of authorization under 14 CFR Part 212 to:

**Permit Air New Zealand to display Continental's designator code in conjunction with foreign air transportation of mail on flights operated by Air New Zealand between (a) points in the United States and points in New Zealand either nonstop or via intermediate points; (b) points within New Zealand; (c) points in the United States and points in third countries; and (d) points in New Zealand and points in third countries.**

Applicant reps: Bruce Keiner, Jr. 202-624-2615 (Continental) DOT Analyst: Gerald Caolo 202-366-2406  
Susan Gotbetter 212-318-3121 (Air New Zealand)

**DISPOSITION**

**XX** **Granted** (subject to conditions, see below)

The exemption authority granted to Continental was effective when taken: August 28, 2002, through August 28, 2004

The statement of authorization granted to Air New Zealand was effective when taken: August 28, 2002, 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 2001 Multilateral Agreement on the Liberalization of International Air Transportation to which the United States and New Zealand are parties.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX** **Holder's certificates of public convenience and necessity (Continental)**

**XX Holder's foreign air carrier permit (Air New Zealand)**  
**XX Standard exemption conditions (attached)**

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

**The statement of authorization granted is subject to the following conditions:**

(a) The statement of authorization will remain in effect only as long as (i) Continental and Air New Zealand 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) Continental and Air New Zealand 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 if the carriers decide to cease operating all or a portion of the approved code-share services. Such notices should be filed in Docket OST-2002-13215.<sup>1</sup>

(c) Continental and/or Air New Zealand 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 shall be filed in Docket OST-2002-13215.

(d) 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 the computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the waybill) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the shipper; and that the 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 for 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 in this blanket statement of authorization should be construed as conferring upon Continental rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Continental notifies the Department 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 (ii) should there be a request by any carrier to use the limited-entry route rights that are included in Continental's authority by virtue of the blanket statement of authorization granted here, but that are not then being used by Continental, the holding of such authority will not be

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<sup>1</sup> We expect this notification to be received within 10 days of such noneffectiveness or of such decision.

considered as providing any preference for Continental in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.<sup>2</sup>

(f) The authority granted here is specifically conditioned so that neither Continental nor Air New Zealand shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

**Remarks:** We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.

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

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action 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 seven (7) 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](http://dms.dot.gov/reports/reports_aviation.asp)*

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<sup>2</sup> The notice in paragraph (c) above can be used for this notification.

## 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 250 (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 with all U.S. Government requirements concerning security; 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.