



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

Issued by the Department of Transportation on March 22, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST-2000-7858

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 Northwest Airlines, Inc. filed 8/25/2000 for:

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 a point or points in the United States and a point or points in Spain. Northwest also requests exemption authority to integrate these services with Northwest's other certificate and exemption authority, consistent with international agreements. Northwest intends to serve the U.S.-Spain market via points in Italy pursuant to a code-share arrangement with Alitalia-Linee Aeree Italiane-S.p.A., and via Amsterdam pursuant to a code-share arrangement with KLM Royal Dutch Airlines.

Delta Air Lines filed an answer stating that it had no objection to the issuance of authorities requested by Northwest, provided that when and if the Government of Spain indicates its willingness to authorize third-country code-share services, such opportunities are made available to all interested U.S. carriers on an equal and non-discriminatory basis.

Sun Country filed an objection¹ to Northwest's application, stating that the Department should take no action on Northwest's application until Northwest has "ceased and desisted from present and continuing anticompetitive behavior, and pledged to refrain from similar behavior against Sun Country in the future."² In response, Northwest states that the Sun Country motion should be denied since Sun Country has failed to show any relevant connection between Northwest's application and Sun Country's allegations regarding Northwest's actions at Minneapolis/St. Paul, or any valid reason for acceptance of Sun Country's opposition long after answers were due in this case. In the event that the Department accepts the motion of Sun Country, Northwest asserts that Sun Country's allegations should be pursued in an enforcement context, not in the context of applications for expanded international authority.

Applicant rep: Megan Rae Rosia (202) 842-3193 DOT Analyst: Linda Senese (202) 366-2367

DISPOSITION

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

The above action was effective when taken: **March 22, 2001**, through **March 22, 2003**.

(See Reverse Side)

¹ Sun Country's objection was accompanied by a motion for leave to file an otherwise unauthorized document. We grant the motion.

² Sun Country motion at 1.

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

XX The exemption authority granted is consistent with the aviation agreements between the United States and Spain,³ the United States and Italy and the United States and the Netherlands.

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**

XX Standard exemption conditions (attached)

XX Statement of authorization dated January 5, 2000, approving Northwest/KLM/Alitalia code-share operations, and conditions therein⁴

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 Northwest rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Northwest 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 Northwest's authority by virtue of the route integration exemption granted here, but that are not then being used by Northwest, the holding of such authority by route integration 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.

Remarks: As to the domestic competition issues raised by Sun Country with respect to Northwest, we will not address them here. The Department is currently considering the allegations raised by Sun Country in an informal investigation, and they are more appropriately considered in that forum. With respect to Delta's comments, we recognize that approval of third-country carrier code-share operations is at the discretion of the Spanish government. Should third-country carrier code-share services with Spain prove to be limited, then, notwithstanding our action here, we would afford all interested carriers a fair opportunity to compete for the authorizations available.⁵

On the basis of data officially noticeable under Rule 24(g) 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) our action was consistent with Department policy; (2) grant of the exemption 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.

³ The U.S.-Spain aviation agreement limits U.S. carrier services to specific cities in Spain. All operations by Northwest must be consistent with these provisions.

⁴ The blanket authorization is subject to a condition that Alitalia, Northwest, and/or KLM must notify the Department of services to new markets no later than 30 days before the carriers commence service in the market. On August 25, 2000, Northwest, Alitalia, and KLM filed the requisite 30-day notice in Docket OST-99-6501.

⁵ See, in this regard condition (f) of the January 5, 2000, statement of authorization for Northwest/KLM/Alitalia code-share operations in Docket OST-1999-6501. As stated above, the Northwest exemption authority granted here is specifically subject to the provisions of that authorization.

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*

APPENDIX A

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, including all FAA 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.