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

Issued by the Department of Transportation on March 2, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST-2001-8772-6

CORRECTED COPY¹

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 Applicants: **Delta Air Lines, Inc. & El Al Israel Airlines Ltd.**

Date Filed: January 24, 2001

Relief requested: (1) Exemption from 49 U.S.C. 41301 to permit **El Al Israel Airlines** to conduct scheduled foreign air transportation of persons, property and mail between Israel and Atlanta, Boston, Cincinnati, Dallas/Ft. Worth, Los Angeles, Miami, Orlando, Phoenix, Salt Lake City, San Francisco, Seattle, and Washington, DC/Baltimore, pursuant to a code-share arrangement with an authorized U.S. carrier.

(2) Statement of authorization pursuant to 14 CFR 212 of the Department's regulations to permit **El Al Israel Airlines** to display Delta's designator code on flights operated by El Al between Tel Aviv and New York (JFK and Newark).

(3) Statement of authorization pursuant to 14 CFR 212 to permit **Delta Air Lines** to display El Al's designator code on flights operated by Delta (a) between New York (JFK) and Tel Aviv, and (b) between New York (JFK and Newark) and Atlanta, Boston, Cincinnati, Dallas/Ft. Worth, Los Angeles, Miami, Orlando, Phoenix, Salt Lake City, San Francisco, Seattle, Washington, DC/Baltimore.

Applicant representatives: John Gillick (El Al) 202-775-9800; Robert Cohn (Delta) 202-663-8060

Responsive pleadings: United Air Lines, Inc., and Northwest Airlines, Inc., filed answers stating that, while they have no objection to the ultimate approval of the joint application, the Department should not grant the requested authority until it takes action on pending applications in the U.S.-Israel third-country codeshare proceeding in Docket OST-2001-8726. Northwest further states that the Department should require compliance with the DOT/FAA Codeshare Safety Program Guidelines prior to approving the joint application. Delta and El Al filed a joint reply stating that withholding the requested authority would violate the provisions of the January 10, 2001, U.S.-Israel Memorandum of Consultations (MOC), and that their joint application should be approved with respect to Delta-operated services that are not required to be supported by a codeshare safety audit.

DISPOSITION

Action: Approved in part, Remainder deferred

Action date: March 2, 2001

Effective dates of exemption authority granted: March 2, 2001 - March 2, 2002

Effective dates of statements of authorization granted: Indefinite, subject to attached code-share conditions

Remarks: We are granting El Al the exemption authority it requests and Delta the statement of authorization it requests, as described above in paragraphs (1) and (3). The authority is encompassed in the bilateral understandings reflected in the MOC signed by the United States and Israel on January 20, 2001. With respect to the concerns raised by United and Northwest, we are actively processing the U.S.-Israel third-country codeshare proceeding (Docket OST-2001-8726) to authorize selected U.S. carriers (and their code-share partners) to conduct code-share services in the U.S.-Israel market. In the meantime, however, we find that it would not be consistent with the public interest to withhold the bilaterally-agreed authority sought here, and for which the record is otherwise complete, pending disposition of that proceeding.

We are, however, deferring action on El Al's request for a statement of authorization that would enable it to place Delta's designator code on flights operated by El Al between Tel Aviv and New York, pending advice from the FAA.

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

Standard exemption conditions (attached) Foreign air carrier permit conditions (Order 86-3-58)
 Code-share conditions (attached)

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

We found that the applicant was qualified to perform its proposed operations.

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/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*

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 14 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).

Delta Air Lines, Inc./El Al Israel Airlines, Ltd. Statements of Authorization
Docket OST-2001-8772

The code-share operations authorized here are subject to the following conditions:

(a) The statements of authorization will remain in effect only as long as (i) Delta and El Al 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) Delta and/or El Al must notify the Department immediately if the code-share agreement under which these code-share services are operated is no longer in effect or if the carriers decide to cease operating all or a portion of the code-share services under the agreement. 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-2001-8772;

(c) 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; that the passenger liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. 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;

(d) The authority granted here is specifically conditioned so that neither Delta nor El Al shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

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