



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

Issued by the Department of Transportation on March 28, 2001

**NOTICE OF ACTION TAKEN -- DOCKET OST-2001-8976**

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: **Air-India Ltd.**

Date Filed: February 23, 2001

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between India and Los Angeles, CA, via the intermediate point Kuala Lumpur, Malaysia, on a code-share basis only (with Fifth Freedom Los Angeles-Kuala Lumpur traffic rights). Air-India proposes to conduct these operations pursuant to a code-share agreement with Malaysia Airlines.

Applicant representative: Marshall Sinick 202-626-6651

Responsive pleadings: Northwest Airlines, Inc., filed an answer urging the Department to deny Air-India's application because of the Government of India's refusal to permit it to place KLM's designator code on flights operated by Northwest between the United States and India via Amsterdam. Northwest states that India's action represents a violation of the 1995 U.S.-India Memorandum of Consultations (1995 MOC). Air-India filed a reply stating that its request is consistent with the provisions of the 1995 MOC; that the codeshare services proposed by Northwest and KLM are not encompassed by the 1995 MOC in view of capacity provisions of India-Netherlands agreements; and that acceptance of Northwest's argument would violate longstanding principles of international law with which the Department has already concurred. Air-India states that the 1995 MOC cannot be read as overriding the earlier capacity provisions in the India-Netherlands bilateral and intercarrier commercial agreements, and that, since KLM is currently offering the maximum capacity permitted under those arrangements, to allow KLM to place its code on Northwest's flights would vitiate the capacity provisions in these preexisting agreements. It further states that if KLM were willing to reduce the number of direct flights it operates in the Netherlands-India market, it could offer the proposed codeshare services, but that as long as it does not, it does not hold the appropriate authority that the 1995 MOC requires all airlines involved in third country codeshare arrangements to hold.

**DISPOSITION**

Action: Approved

Action date: March 28, 2001

Effective dates of authority granted: March 28, 2001 - March 28, 2002

Remarks: We have decided to grant Air-India the exemption authority it seeks. The codeshare services proposed are fully consistent with the 1995 U.S.-India MOC. Regarding Northwest's argument concerning KLM's entitlement to place its code on Northwest's U.S.-Amsterdam-India flights, we have reviewed the record before us, including the history of the relevant bilateral agreements, and we find, in the circumstances presented, that Northwest has not persuasively demonstrated that we have an enforceable right under the 1995 MOC for the KLM services in question. In these circumstances, we do not believe that it is consistent with the public interest to withhold the requested authority.

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

Foreign air carrier permit conditions (Order 95-4-36)

Statement of Authorization for Malaysia

Airlines and Air-India code-share operations dated March 23, 2001, and conditions therein (Docket OST-2001-8975).

**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.

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