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Order 2001-5-24

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

Issued by the Department of Transportation  
on the 17<sup>th</sup> of May, 2001

**SERVED: May 17, 2001**

**U.S.-Israel Third-Country Code-Sharing  
Opportunities**

**Docket OST-2001-8726 - 22**

**FINAL ORDER**

**SUMMARY**

By this order we make final our tentative decision to select American Airlines to operate third-country code-share service via Zurich with Swissair, and United Air Lines to operate third-country code-share service via Munich/Frankfurt with Lufthansa, in the U.S.-Israel market. In addition, for U.S.-Israel third-country code-share services that will become available April 1, 2002, we make final our tentative decision to select Northwest Airlines to operate service in conjunction with KLM.

**BACKGROUND**

Under a Memorandum of Consultations (MOC) signed January 10, 2001, representatives of the United States and Israel reached an *ad referendum* agreement on the text of a Protocol amending the 1950 U.S.-Israel Air Transport Agreement, as amended. Under the terms of the Protocol, the U.S. may authorize, on a phased-in basis, up to four code-share arrangements between U.S. and third-country airlines for service between the U.S. and Israel.<sup>1</sup> Authorized U.S.-third-country code-share arrangements may provide services in the U.S.-Israel market in phases as follows: Phase 1 – Up to two arrangements until March 31, 2002; Phase 2 – Up to three arrangements from April 1, 2002, through March 31, 2003; and Phase 3 – Up to four arrangements from April 1, 2003, through March 31, 2004.<sup>2</sup>

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<sup>1</sup>A code-share arrangement between a U.S. carrier and a third-country carrier that entails code-share services on more than one route would be counted as one arrangement. A code-share arrangement between two U.S. carriers and a third-country carrier would be counted as two arrangements.

<sup>2</sup>The Protocol provides that the frequency of such code-share operations shall be limited only by the number of frequencies that the operating airline is entitled to use on the relevant segments, consistent with relevant bilateral agreements.

The MOC also provides that the code-share opportunity under Phase 2 may be exercised in advance of April 1, 2002, by mutual agreement of both parties.

By Notice dated January 17, 2001, we requested that all U.S. air carriers interested in making use of the Phase 1 and Phase 2 third-country code-share opportunities described above file applications with the Department. Three carriers--American Airlines, Northwest Airlines, and United Air Lines--applied for the three opportunities to serve Israel under code-share arrangements with Swissair, KLM, and Lufthansa, respectively. By Order 2001-4-24, we tentatively selected American/Swissair and United/Lufthansa for the Phase 1 opportunities and Northwest/KLM for the Phase 2 opportunity. We required that objections to our tentative decision be filed by April 30, 2001, and that answers be filed by May 7, 2001.

#### **RESPONSES TO ORDER 2001-4-24**

Northwest; the Metropolitan Airports Commission, the owner and operator of Minneapolis-St. Paul International Airport ("Minneapolis-St. Paul"); and the Memphis-Shelby County Airport Authority ("Memphis") filed objections to our tentative decision. American and United filed answers to the objections.

In general, Northwest and the Civic Parties oppose the tentative decision and urge the Department to reconsider its tentative findings and conclusions and award one of the currently available third-country code-share opportunities to Northwest. In this connection, Northwest states that the Department's tentative decision is contrary to the public interest because it unnecessarily excludes three U.S. gateways--Minneapolis-St. Paul, Memphis, and Seattle--from receiving new U.S.-Israel service, while providing duplicative service at ten other U.S. gateways, five of which already receive superior non-stop or one-stop direct service to Israel from other carriers. American's proposal, according to Northwest, offers nothing that United's service does not also offer. Northwest argues that the tentative selection of American and United would provide service to only 15 U.S. gateways compared to the 18 U.S. gateways that would receive service if the Department selected Northwest in conjunction with United for the Phase 1 opportunities. Northwest also argues that any advantage American might have over Northwest with respect to the proposed level of Europe-Israel frequencies is mitigated by the duplicative nature of the proposals offered by American and United. Similarly, with respect to elapsed times, Northwest maintains that any advantage that American might possess over Northwest is in markets that currently receive superior non-stop or one-stop service from other carriers.

Northwest further argues that the Department's tentative decision fails to give proper weight to the pleadings filed by Memphis, Minneapolis-St. Paul, the Port of Seattle, and the City of Houston and the Greater Houston Partnership. Northwest also argues that the tentative decision fails to recognize the historic and pioneering efforts of Northwest to open the U.S.-Israel market to third-country code-share services. Finally, in the event that the Department finalizes its tentative decision, Northwest urges the Department to take immediate steps, under the terms of the U.S.-Israel MOC, to make the 2002 code-share opportunity available as soon as possible.

Minneapolis-St. Paul states that it is concerned that the Department's tentative decision omits mention of its timely filed pleading. Consequently, Minneapolis-St. Paul states that the Department's tentative decision apparently did not consider all of the comments filed in the docket of this proceeding and urges the Department to reconsider its tentative decision and select Northwest for one of the currently available code-share opportunities. In this regard, Minneapolis-St. Paul argues that Northwest would be the only carrier proposing to offer service from the Twin Cities, which would benefit a large segment of the U.S. population in the Upper Midwest that has important economic, academic, and civic ties with Israel.

Minneapolis-St. Paul also contends that Tel Aviv is one of the top 50 origin and destination markets for the Twin Cities and that the Minneapolis/St. Paul-Tel Aviv market has experienced an average annual growth rate of almost 6% over the past decade. The additional service by Northwest to Israel would be a catalyst for additional growth in the market, according to Minneapolis-St. Paul. In addition, Minneapolis-St. Paul states that reversing the tentative decision and selecting Northwest for Phase 1 would honor the Department's own policy of focusing attention on the need of local U.S. cities for international air service.

Memphis also urges the Department to reverse the tentative decision and to select Northwest for one of the Phase 1 third-country code-share opportunities. Memphis maintains that, unlike other points included in the applicants' service proposals, Memphis has very limited international service. Thus, Memphis argues that the public interest would be better served by adding new service to Memphis rather than providing duplicative service from certain other cities. In the event that the Department makes its tentative decision final, Memphis urges the Department to accelerate the availability date of the Phase 2 code-share opportunity.

United states that so long as it secures one of the Phase 1 opportunities currently available, it is indifferent as to which of the other two applicant carriers receives the other, but United urges the Department to make its final decision quickly. In this connection, United points out that bookings for the peak summer travel season have already started, and that unless the Department acts quickly to make a final decision in this proceeding, the benefits of Phase 1 will be lost. Moreover, United emphasizes that the Department has already approved the bilateral code-share services of El Al in conjunction with Delta Air Lines, which provides the benefits intended for the Israeli side of the MOC, while U.S. carriers have been required to wait for a decision in this case. United concurs with Northwest's request that the Department make efforts to accelerate the Phase 2 availability date, provided that such efforts do not delay the conclusion of this proceeding.

With regard to the objections filed by Northwest and the civic parties, both American and United maintain that the Department has already considered the arguments advanced by Northwest and its civic supporters, and that nothing new has been presented to alter the Department's tentative decision in this proceeding. United argues that none of the three cities unique to Northwest's proposal (Minneapolis-St. Paul, Memphis, and Seattle) is among the top ten U.S. markets to Israel. In addition, American and United contend Northwest's elapsed times for these cities are no faster than the two-stop services that they would provide. In response to Northwest's claim that the U.S. gateways of American and United overlap, United contends that duplication is

appropriate and necessary to provide most of the largest U.S.-Israel markets with additional competitive service options. Concerning the number of U.S. gateways proposed by Northwest, American argues that the relevant issue is the amount of *effective* connecting service between the U.S. and Israel. In this regard, American states that Northwest's slow eastbound connections cannot be outweighed by the number of U.S. gateways it proposes to serve.

## **DECISION**

We have decided to make final our tentative decision to select American/Swissair and United/Lufthansa for the two third-country code-share authorizations currently available in the U.S.-Israel market. In addition, we have decided to make final our tentative decision to select Northwest/KLM for the third authorization that becomes available April 1, 2002.<sup>3</sup>

This case stems from an important new agreement reached earlier this year that provides, among other things, for U.S. carrier service in the U.S.-Israel market under code-share arrangements with third-country airlines. This agreement provides a valuable opportunity to increase the number of U.S. carriers serving Israel and the level of competitive services available to travelers and shippers. In our tentative decision, we recognized that all three applicants in this case would offer important services in the market, increasing the price and service options to consumers. None now serves Israel and each would offer at least daily connecting service to numerous cities throughout the United States. As three opportunities are available (two now and one in April 2002), we concluded that all three should be authorized. Of the three applications before us, the proposals of United and American provided the most frequencies to Israel, offered the best overall elapsed travel times, and provided the highest level of immediate competition. Given the limited number of services now provided by U.S. carriers in the market, we tentatively found that the proposals of United and American provided the greatest overall service and competitive benefits and should be awarded the Phase 1 service opportunities, and that Northwest should be awarded the Phase 2 opportunity.

None of the objecting parties has provided any new arguments or evidence that persuades us to modify our tentative decision. Rather, the objecting parties have reiterated arguments already raised and considered in our show-cause order.

In particular, Northwest contends that the services of United and American are largely duplicative and, thus, that authorization of both for the Phase 1 opportunities does not best serve the public interest. While Northwest is correct that American and United would serve many of the same U.S. cities with comparable levels of service and similar elapsed times, such services involve many of the largest U.S.-Israel origin and destination markets and will provide the most

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<sup>3</sup> As noted in our show-cause order, each of the three carriers holds the necessary underlying authority to serve Israel. In addition, each of the proposed code-share relationships holds blanket authority for code-share services, and each has filed the required notice for expansion of its services in the Israel market, subject to completion of the carrier selection procedures here. With this final order, each relationship will hold all of authority necessary to commence the operations as authorized. Order 2001-4-24, at 2, n.4.

competitive options for the greater number of travelers and shippers.<sup>4</sup> Northwest also proposes service to many of the same cities--Atlanta, Boston, Chicago, Miami, Newark, New York, San Francisco, and Washington, D.C. However, while its service would provide an additional service option, its service would be less competitive because it would offer fewer Europe-Israel frequencies and less convenient connections. Thus, we are unpersuaded that the commonality of U.S. cities in the United and American proposals detracts from either carrier's selection in this case for one of the Phase 1 opportunities.

As we stated in our show-cause order, we are not persuaded that the larger number of gateways that Northwest would serve, including three not served by the other applicants--Minneapolis, Memphis, and Seattle--justifies award of one of the two Phase 1 opportunities to Northwest. While this is clearly a benefit of Northwest's proposal, on balance, given the fewer frequencies and less competitive connecting service offered by Northwest, we do not find that the benefits of Northwest's proposal warrant its selection over the other applicants for one of the Phase 1 opportunities.

This being said, we have nevertheless recognized the benefits offered by Northwest's proposed services and awarded it one of the code-share opportunities at issue.<sup>5</sup> Thus, Northwest will have the authority needed to offer the three cities unique to its proposal, as well as the others included in its proposal, nonstop-to-nonstop service under its code-share with KLM at the latest by spring of next year. Prior to that time, the Department will take steps, in recognition of the pleadings filed by Northwest and its civic supporters, to seek to accelerate the effective date of the Phase 2 code-share opportunity, consistent with the terms of the U.S.-Israel agreement.

**ACCORDINGLY,**

1. We make final our tentative decision in Order 2001-4-24 and select American Airlines, Inc.; and United Air Lines, Inc. to operate third-country code-share services in the U.S.-Israel market via Zurich and Frankfurt/Munich, respectively, with Swissair--Swiss Air Transport Company Ltd. and Lufthansa German Airlines, respectively, effective immediately;
2. We make final our tentative decision in Order 2001-4-24 and select Northwest Airlines, Inc. to operate third-country code-share services in the U.S.-Israel market beginning April 1, 2002, via Amsterdam in conjunction with KLM Royal Dutch Airlines.<sup>6</sup>
3. We may amend, modify, or revoke this order at our discretion without hearing; and

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<sup>4</sup> Consolidated Answer of United Air Lines, Inc., dated February 5, 2001, Exhibit UA-Ans.-3, page 1 of 1.

<sup>5</sup> While our tentative decision inadvertently failed to refer specifically to the Minneapolis-St Paul pleading, we fully considered the merits of Northwest's Minneapolis-St. Paul proposal in arriving at our tentative findings.

<sup>6</sup>The MOC provides that the code-share opportunity may be exercised in advance of April 1, 2002, by mutual agreement of both parties.

4. We will serve a copy of this order on American Airlines, Inc.; United Air Lines, Inc.; Northwest Airlines, Inc; Swissair-Swiss Air Transport Company, Ltd.; Lufthansa German Airlines; KLM Royal Dutch Airlines; The Metropolitan Airports Commission (Minneapolis-St. Paul); The Port of Seattle; The Memphis-Shelby County Airport Authority; The City of Houston and the Greater Houston Partnership; Sun Country Airlines; the U.S. Department of State (Office of Aviation Negotiations); the Ambassador of Israel in Washington, D.C.; and the Federal Aviation Administration.

By:

**SUSAN McDERMOTT**  
Deputy Assistant Secretary for  
Aviation and International Affairs

(SEAL)

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