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

Issued by the Department of Transportation on November 29, 2001

NOTICE OF ACTION TAKEN -- DOCKETS OST-2001-10880 - 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).

Applications of Continental Airlines, Inc. and KLM Royal Dutch Airlines filed 10/22/2001 for:

XX Exemption for two years pursuant to 49 U.S.C. §40109 for Continental to provide the following service:

Scheduled foreign air transportation of persons, property and mail between any point or points in the United States, directly or via any intermediate point or points, and any point or points in the Netherlands, and between the Netherlands and any point or points in third countries, subject to the conditions normally imposed by the Department. Continental also requests the authority to integrate its exemption here with other services authorized by Continental's current and future certificate and exemption authorities granted by the Department. Continental intends to use this authority to operate reciprocal code-share services with KLM.¹

XX Statement of Authorization for Continental pursuant to Part 212 to code share as follows:

Display KLM's code on flights operated by Continental (a) between points in the United States and points in the Netherlands, via intermediate points; (b) between points in the United States; and (c) between the United States and points in third countries.²

XX Statement of Authorization for KLM³ pursuant to Part 212 to code share as follows:

Display Continental's code on flights operated by KLM between (a) the Netherlands and points in the United States, via intermediate points; (b) between points within the Netherlands; and (c) between points in the Netherlands and points in third countries.

The City of Houston and the Greater Houston Partnership filed an answer in support of the applications.

Applicant reps: R. Bruce Keiner for Continental (202) 624-2615 and Paul V. Mifsud for KLM (202) 861-5867

DOT Analyst: Michael D. Bodman (202) 366-9667

DISPOSITION

XX Granted in part, subject to conditions (see below).

XX Balance (*i.e.*, route integration with future authority) dismissed (see below).

¹KLM already holds the underlying route authority to operate the proposed code-share services.

²ExpressJet d/b/a Continental Express intends to display the KLM code on flights operated by ExpressJet, but ExpressJet does not require a Statement of Authorization since ExpressJet operates only "small aircraft" as defined in Section 298.2(u) of the Department's regulations (Section 212.1).

³For the purposes of this application, KLM includes its affiliate carrier, KLM Cityhopper.

The above action with respect to Continental's exemption authority was effective when taken: November 29, 2001, through November 29, 2003.

The above action with respect to the Statements of Authorization was effective when taken: November 29, 2001, and will remain in effect indefinitely, subject to conditions (see below).

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

XX The authority granted is consistent with the aviation agreement between 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 Continental's certificates of public convenience and necessity

XX Standard Exemption Conditions (attached)

XX KLM's foreign air carrier permit

Conditions: The exemption authority granted to Continental to serve intermediate and beyond points is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority, by virtue of either the present action or other action of the Department, and is subject to all conditions attached to that authority.

The route integration and blanket code-share authority granted is subject to the condition that any service provided under this authority shall be consistent with the applicable bilateral aviation agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of this authority requested should be construed as conferring upon Continental additional rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Continental first 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;⁴ 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 and blanket code-share authority granted here, but that are not then being used by Continental, the holding of such authority 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 Statements of Authorization are also subject to the following additional conditions:

(a) The statements of authorization will remain in effect only as long as (i) Continental and KLM 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.⁵

(b) Continental and/or KLM 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 the carriers decide to cease operating any or all of the approved code-share services.⁶ (Such notice should be filed in Docket OST-2001-10880.)

(c) Continental and/or KLM 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

⁴With respect to code-share operations the notice referred to in paragraph (c) of the list of additional conditions may be used for this notification.

⁵The authority granted here does not confer antitrust immunity with respect to transactions between Continental and Northwest or KLM, jointly or severally. Transactions between Northwest and Continental, or between KLM and Continental, or between the Northwest/KLM Alliance and Continental are not immunized.

⁶We expect this notification to be received within ten (10) days after such non-effectiveness or of such decision.

carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. (Such notice should be filed in Docket OST-2001-10880.)

(d) The code-sharing operations conducted under this authority must comply with Part 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; and that the passenger liability of the operating carrier be unaffected. Further, the operating carrier shall not permit the code of its U.S. code-sharing carrier 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 granted here is specifically conditioned so that neither Continental nor KLM shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.⁷

Dismissal: We dismissed Continental's request for route integration authority with respect to future exemption and certificate authority. In acting on comparable requests we have decided not to grant open route integration authority on a prospective basis and Continental has provided no persuasive basis to deviate from that result here. (*See* Orders 96-11-25 and 98-7-21).

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 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 order is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

⁷We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently decide to amend their code-share agreement or any other agreement between them to include any provision relating to an exclusive arrangement between the parties regarding their code-share services, that amended language must first be submitted for consideration by the Department.

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.