



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

Issued by the Department of Transportation on November 6, 2003

NOTICE OF ACTION TAKEN -- DOCKETS OST-2003-16315 & 16314

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(s): **Air-India Limited & Asiana Airlines, Inc.**

Date(s) Filed: October 10, 2003

Relief requested:

Air-India Limited (OST-2003-16315)--Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail between points in India, on the one hand, and San Francisco, Los Angeles, and Seattle, via Seoul, Korea (without Seoul-U.S. traffic rights), on the other hand, pursuant to a code-share agreement with Asiana Airlines, Inc. (Asiana). Air-India asks that we approve its request for at least one year.

Asiana (OST-2003-16314)--Statement of authorization under 14 CFR Part 212 to display Air-India's designator code ("AI") on flights operated by Asiana Airlines between Seoul, Korea, on the one hand, and Los Angeles, San Francisco, and Seattle, on the other hand. Asiana asks that we approve its request for an indefinite period.

If renewal, date and citation of last action: New authority

Applicant representative: Marshall S. Sinick--(202) 626-6600 (Air-India)

Gregory S. Walden--(202) 457-6135 (Asiana)

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: On October 27, 2003, United filed a consolidated answer stating that in August 2003, it filed a request with the Indian authorities seeking similar authority to code share on Asiana's services between the United States and India, via Seoul. United states that it has been advised that India has approved its code share request through December 31, 2003. United states that under the circumstances, it would not oppose our granting the Air-India/Asiana requests, for a similar term, through December 31. United further states that in the meantime it will seek an extension of its Indian authority beyond December 31, and keep the Department advised of the results of its efforts.

DISPOSITION

Action: Approved In Part/Deferred In Part¹

Action date: November 6, 2003

Effective dates of the exemption authority granted Air-India--November 6, 2003-December 31, 2003

Effective dates of the statement of authorization granted Asiana--November 6, 2003-December 31, 2003

Basis for approval (bilateral agreement/reciprocity): 1995 Memorandum of Consultations between the United States and India (1995 MOC) and U.S.-Korea Air Transport Agreement.

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

Air-India's Foreign Air Carrier permit (Order 95-4-36), the 1995 MOC, and standard exemption conditions (attached)

Asiana Foreign Air Carrier permit (Order 2000-11-10) and standard exemption conditions (attached)

¹ We defer action on Air-India's request for an exemption and Asiana's request for a statement of authorization beyond December 31, 2003, pending the outcome of United's efforts to extend its Indian authority to codeshare with Asiana between the United States and India, via Seoul, beyond December 31.

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

- (a) The statement of authorization will remain in effect only as long as (i) Asiana and Air-India 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) Asiana and/or Air-India must promptly notify the Department 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. Such notices should be filed in Dockets OST-2003-16314 and 16315.²
- (c) The code-sharing operations conducted under this authority must comply with 14 CFR 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
- (d) The authority granted here is specifically conditioned so that neither carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.
- (e) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

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

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) immediate action was required and was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) 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 seven (7) 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

² We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

Foreign Carrier Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) 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, and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (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, except as otherwise provided in the applicable aviation agreement, comply 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.