

Order 97-4-3

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

SERVED APRIL 2, 1997

Issued by the Department of Transportation
on the 2nd day of April, 1997

In the matter of

AIR-INDIA LIMITED

Docket OST-97-2296

ORDER TO FILE SCHEDULES

Summary

In this order we are imposing Phase 1 schedule-filing requirements of Part 213 (14 CFR Part 213) of the Department's regulations to cover all of the services of Air-India Limited, a foreign air carrier of India. We are taking this action in response to the Government of India's withholding of bilaterally-agreed authority from U.S. carriers.

Background

The Air Transport Agreement between the United States and India (the Agreement) provides for the operation of air services between the two countries.¹ In addition, on December 2, 1995, the United States and India concluded a Memorandum of Consultations (1995 MOC) along with a revised Schedule which significantly expanded opportunities for the airlines of both sides.² The 1995 MOC establishes rights for the carriers of both sides to provide service through cooperative service arrangements (including code-share and blocked-space arrangements involving carriers of third countries).

¹ See 1956 Air Transport Services Agreement between the United States and India, as amended.

² The United States and India agreed that pending the entry into force of the revised Schedule, in accordance with the provisions of Article 12 of the Agreement, the designated airline(s) of either contracting party will be permitted to conduct operations in accordance with the revised schedule on a provisional basis with immediate effect. See 1995 MOC.

Air-India Limited has been designated by the Government of India and holds Department authority to conduct services between India and the United States, consistent with the Agreement and the 1995 MOC.³

A number of U.S. carriers have been designated by the United States to provide services from the United States to specified points in the India. Moreover, by Order 97-2-97, we selected United Air Lines, Inc., Delta Air Lines, Inc. and Northwest Airlines, Inc. to serve the U.S.-India market through code-share arrangements with third-country carriers, consistent with the provisions of the 1995 MOC.⁴ Following selection of the three U.S. carriers, on March 10, 1997, the U.S. Embassy in New Delhi notified the Government of India of the U.S. carriers selected to commence third-country code-share services in the U.S.-India market.

On March 13 and 27, 1997, respectively, United and Northwest submitted letters to India's Director General of Civil Aviation (DGCA) notifying the Indian government of their intention to commence code-share services in the U.S.-India market (for the carriage of only U.S.-India traffic). United sought to commence code-share services with Lufthansa German Airlines between Frankfurt and Mumbai (formerly known as Bombay) and Frankfurt and Madras, and Northwest proposed to commence similar services with KLM Royal Dutch Airlines between Amsterdam and Mumbai. Both carriers proposed to commence services on April 1, 1997.

³ By Order 95-4-36, we issued Air-India a foreign air carrier permit authorizing it to engage in scheduled combination services between India and New York, via specified intermediate points; and charters subject to Part 212 of our rules. In addition, we have granted Air-India authority to conduct a number of services by exemption. For example, on June 4, 1996, we granted Air-India authority to engage in scheduled combination services between India and Chicago, via Toronto, London, Frankfurt and Paris, consistent with the provisions of the 1995 MOC. See Order 96-8-46. We have also granted Air-India exemption authority to serve Los Angeles and Washington, D.C. under a code-share arrangement with United Air Lines, Inc. in conjunction with United's round-the-world service. See Notices of Action Taken, dated January 6, 1997, in Dockets OST-95-901 and OST-96-1007, respectively. Most recently, on April 4, 1996, we renewed the authority of Emery Worldwide Airlines, Inc., a U.S. air carrier, to wet lease aircraft to Air-India, through May 20, 1997, for all-cargo services between Bombay/Delhi and New York, via Paris and Dubai.

⁴ Attachment B (Schedule), Part II, paragraph 3(b) of the 1995 MOC provides that four U.S. airlines may commence cooperative service arrangements, such as code-shares and blocked-space arrangements, with third-country airlines after April 1, 1997. The United States therefore retains the right to select an additional carrier for such third-country code-share services. See Order 97-2-97.

By letters dated March 27 and 29, 1997, respectively, India's Director of Regulations and Information (on behalf of the Director of India's DGCA), notified United and Northwest that they would not be permitted to commence the proposed code-share services. The basis for the denial of United's request was because Lufthansa, the designated airline of Germany, "has not been permitted to operate code share services under the India-Germany Air Services Agreement." Similarly, in the case of Northwest, the denial was based on the fact that KLM, the designated airline of the Netherlands, "has not been permitted to operate code-share services under the India-Netherlands Air Services Agreements."

The Government of the United States specifically registered its objections to this result and advised the Government of India that the United States would consider India's failure to immediately approve the requests of United and Northwest to be a serious breach of India's undertaking to the United States. The Government of the United States further requested that the Government of India review and immediately reverse its earlier decisions.

On April 1, 1997, the U.S. Embassy in Delhi reported to us that the Government of India refused to reverse its decisions to deny the requests of United and Northwest to commence code-share services in the U.S.-India market.

Decision

Based on the facts before us, we find that this situation requires the imposition of the schedule filing requirements of Part 213 on Air-India. The Government of India's refusal to permit United and Northwest to commence third-country code-share services in the U.S.-India market is inconsistent with India's obligations under the 1995 MOC.

Under the terms of the 1995 MOC, both sides agreed to approve code-sharing arrangements between their carriers and third-country carriers. The only exception to this is if such third country does not authorize or allow "comparable arrangements between the airlines of the other contracting party and other airlines on services to, from and through such third country."⁵ Under these circumstances, India's denials of the two U.S. carrier requests would only have been warranted if either Germany and the Netherlands had made clear that they were not willing to grant such code-share authority.

⁵ See 1995 MOC, Part II, paragraph 1(b).

The Government of India has therefore, over the objections of the United States Government, effectively denied U.S. carriers rights set forth in the 1995 MOC. Therefore, we conclude that imposition of a schedule-filing requirement on Air-India Limited is necessary and consistent with the provisions of Part 213.

We conclude that, in accordance with the provisions of section 213.3(c), the Government of the India has, over the objections of the United States, taken actions which deny U.S. carriers operating rights, and that under these circumstances, the public interest requires that Air-India file its schedules for all U.S. services, so that we may determine whether the operation of such services, or any part thereof, may be contrary to applicable law or adversely affect the public interest.

ACCORDINGLY,

1. Air-India Limited shall file with the Director, Office of International Aviation (X-40), within two calendar days after service of this order, an original and three copies of any and all of its existing schedules of service, including extra sections, between any point or points in the United States and any point or points not in the United States, which shall include:

- (a) the type of equipment used or to be used,
- (b) the frequency and day(s) of operations of each flight,
- (c) the specific airport served at each point, and
- (d) the time of arrival and departure at each point.

2. Air-India Limited shall file with the Director, Office of International Aviation (X-40), an original and three copies of any and all of its proposed schedules of service between any point or points in the United States and any point or points not in the United States, including the information noted in ordering paragraph 1 above, the proposed effective date of such schedules, and the proposed termination date of such schedules (if known), at least 30 days prior to inauguration of service;

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

4. We shall serve a copy of this order on Air-India Limited; United Air Lines, Inc.; Northwest Airlines, Inc.; Delta Air Lines, Inc.; Emery Worldwide Airlines, Inc.; the

Embassy of India in Washington, D.C.; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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