



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

Issued by the Department of Transportation
on the 28th day of May , 1997

Served: May 28, 1997

Application of

ALL NIPPON AIRWAYS CO., LTD.

for an exemption under 49 U.S.C. §40109

Dockets OST-97-2129

ORDER

Summary

In this order we are granting All Nippon Airways Co., Ltd. (ANA) an exemption from §41301 of Title 49 of the U.S. Code to conduct scheduled combination services between Hiroshima, Japan, and Guam.¹

Application

By application filed February 12, 1997, ANA seeks exemption authority authorizing it to engage in scheduled foreign air transportation of persons, property and mail between Hiroshima, Japan and Guam. ANA proposes to commence these services on June 5, 1997, with B-767 aircraft.²

¹ ANA holds a foreign air carrier permit issued by Order 87-11-27, authorizing it to engage in scheduled foreign air transportation of persons, property and mail between Tokyo and the terminal points Los Angeles, California, and Washington, D.C., and the coterminal points Guam and Saipan; and to perform charters in accordance with Part 212 of the Department's rules. ANA also holds various exemptions to perform specified services between Japan and the United States.

² On March 19, 1997, Japan's Minister of Transport issued ANA an Operating Permit (No. 117) to conduct scheduled services in the Hiroshima-Guam market.

In support of its request, ANA states that the authority requested is consistent with a 1989 Memorandum of Understanding between the United States and Japan (1989 MOU); that it has been designated by the Government of Japan to perform the proposed services; and that its services will benefit the traveling public.³

Responsive Pleadings

Responsive pleadings were filed by Northwest Airlines, Inc., UnitedAir Lines, Inc., the Governor of Guam and the Guam International Airport Authority (The Guam Parties) and ANA.⁴

Northwest urges us to deny ANA's request because of Japan's refusal to allow Northwest to operate bilaterally-authorized Fifth Freedom services beyond Osaka to Jakarta, Indonesia, with full traffic rights. Northwest states that the Department is fully aware of Japan's refusal to allow Northwest to conduct bilaterally-authorized services beyond Japan, and notes that in a related proceeding we recently found that Japan is violating the U.S.-Japan bilateral aviation agreement (the Agreement) because of Japan's failure to allow Northwest to commence its Seattle-Osaka-Jakarta services.⁵

United and the Guam Parties support grant of ANA's request and state that we should reject efforts by Northwest to "leverage" ANA's Third and Fourth Freedom services as a means of forcing a resolution of Northwest's Fifth Freedom services beyond Japan. United and the Guam Parties state that we should approve Third and Fourth Freedom services and engage the Japanese on unresolved Fifth Freedom matters. United adds that it remains committed to seeing the Japanese "honor the bilateral rights of both United and Northwest" but believes we should seek a resolution of the Fifth Freedom issue in the context of aviation negotiations with Japan.

ANA states that the concerns raised by Northwest should be resolved in the context of on-going bilateral aviation discussions between the United States and Japan.

³ By Diplomatic Note E-28, dated April 4, 1997, the Government of Japan designated ANA to operate services between Guam/Saipan and one of any two points in Japan (other than Tokyo, Osaka, Nagoya and Fukuoka) and selected Hiroshima as one of the two new points in Japan, pursuant to section I.E.2 of the 1989 MOU.

⁴ Reply comments filed by United and the Guam Parties were accompanied by motions to file otherwise unauthorized documents. We will grant the motions.

⁵ See Order 97-2-10, Docket OST-96-1500.

Decision

We have decided to grant ANA's request to conduct scheduled combination services in the Hiroshima, Japan-Guam market for one year from the service date of this order. We are making this authority subject to the terms and conditions of the 1989 MOU, and ANA's foreign air carrier permit. The requested authority is provided for in the 1989 MOU between the United States and Japan, and ANA has been designated by its government to perform the services requested.

We have recently addressed the issues raised by Northwest in this proceeding in the context of a request by Japan Airlines to conduct services in the Japan-U.S. market (see Order 97-5-16).⁶ The views we expressed there are similarly applicable to ANA's request here.⁷ Thus, while we continue to be sensitive to the concerns raised by Northwest, we do not believe that this ANA request presents the appropriate forum for addressing them.

As we stated in Order 97-5-16, the United States and Japan have held talks aimed at exploring various issues in the relationship, including the issue raised by Northwest here and in its complaint. For this reason, we believe that in the interest of maximizing the possibility for a positive outcome of those talks, the appropriate course of action is to grant this request while we seek to resolve a number of outstanding aviation issues with Japan.

ACCORDINGLY,

1. We grant All Nippon Airways Co., Ltd. an exemption from §41301 of Title 49 of the U.S. Code to permit it to engage in scheduled foreign air transportation of persons, property and mail between Hiroshima, Japan, and Guam;
2. The authority granted above shall be effective for one year from the service date of this order;
3. The authority granted in ordering paragraph 1 above is subject to the conditions of All Nippon Airways' foreign air carrier permit (Order 87-11-27) and the 1989 MOU;

⁶ Dockets OST-95-971, OST-95-842 and OST-96-1500.

⁷ Our decision to grant this authority for one year, rather than for the shorter term noted in Order 97-5-16, reflects that this case involves Guam. See Orders 92-3-37, 88-12-45 and 81-3-157.

4. To the extent not granted, we deny any additional requests for relief in Docket OST-97-2129;

5. We grant the motions of United Air Lines, Inc. and the Guam Parties to file otherwise unauthorized documents in this proceeding

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

7. We will serve a copy of this order on All Nippon Airways Co., Ltd.; Northwest Airlines, Inc.; United Air Lines, Inc.; the Governor of Guam and the Guam International Airport Authority; the Embassy of Japan in Washington, D.C.; the Department of State (Office of Aviation Negotiations) and the Federal Aviation Administration (SF-IFO).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)