



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

Issued by the Department of Transportation on October 23, 1998

NOTICE OF ACTION TAKEN -- DOCKET OST-98-4541

CORRECTED COPY

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: **Air Nippon Co., Ltd. (ANK)**

Date Filed: October 5, 1998

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail between any point or points in Japan, and any point or points in the United States; and to perform charters subject to Part 212 of our rules. ANK states that its initial service under the exemption would be provided on a code-share basis on flights operated by All Nippon Airways.

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

Applicant representative: James L. Devall (202) 298-8660

Responsive pleadings: Continental Airlines, Inc. filed an answer stating that it did not object to ANK's request provided that we granted Continental's request for comparable authority to use for code-sharing services in the U.S.-Japan market with Northwest Airlines (see Docket OST-98-4364). ANK filed a reply stating that notwithstanding Continental's comments, we should promptly approve its request.

DISPOSITION

Action: Approved ¹

Action date: October 23, 1998

Effective dates of authority granted: October 23, 1998-October 23, 1999 ²

Basis for approval (bilateral agreement/reciprocity): 1998 Memorandum of Understanding between the United States and Japan (1998 MOU).

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

X Standard exemption conditions (attached)

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that ANK is financially and operationally qualified to perform the services authorized above. In addition, we found that ANK is substantially owned and effectively controlled by Japanese citizens. ANK is properly licensed and designated by the Government of Japan to perform the proposed services. By memorandum dated September 25, 1998, the FAA advised us that it knew of no reason why we should act unfavorably on ANK's application.

The authority granted above is subject to the provisions of the 1998 MOU, and the further condition that Air Nippon shall not perform any Third and Fourth Freedom charters unless specific authority in the form of a statement of authorization for such charter(s) has been granted by the Department. Air Nippon shall file applications for such statements of authorization at least 30 calendar days before the charters involved pursuant to the procedures set forth in § 212.10; provided, that applications involving all-cargo charters may be filed up to ten calendar days before the flights. (Under § 212.11(c), we need not submit denials of late-filed applications for Presidential review).

**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
(over)

¹ We concurrently granted the request of Continental Airlines in Docket OST-98-4364.

² We have concurrently approved the undocketed request by All Nippon Airways to code-share with ANK. That authority is coextensive with the authority we have granted here to ANK.

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 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 document is available on the World Wide Web at:
<http://dms.dot.gov/general/orders/aviation.asp>*