



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

Issued by the Department of Transportation on January 5, 2000

NOTICE OF ACTION TAKEN -- DOCKET OST-99-6558

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).

Application of Delta Air Lines, Inc. filed 11/24/99 for:

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

Scheduled foreign air transportation of persons, property and mail between Atlanta and New York, on the one hand, and Cape Town, Johannesburg, Durban, Port Elizabeth, East London, and George, South Africa, on the other, and to integrate this authority with its existing exemption and certificate authority. Delta intends to offer this service pursuant to a code-share arrangement with South African Airways (SAA) whereby SAA will display Delta's designator code on flights operated by SAA between Atlanta and New York, on the one hand, and Cape Town and Johannesburg, on the other, and on flights within South Africa that connect to these services.

American Airlines filed an answer urging the Department to deny Delta's application unless Delta surrenders its third-country code-share designation to serve South Africa in conjunction with Air France. Delta filed a responsive pleading.

Applicant rep: Robert E. Cohn 202-663-8060 DOT Analyst: Sylvia Moore 202-366-6519

DISPOSITION

XX **Granted (subject to conditions, see below)**

The above action was effective when taken: January 5, 2000, through January 5, 2002

**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 South Africa.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX **Holder's certificate of public convenience and necessity**

XX **Standard exemption conditions (attached)**

XX **Statement of authorization for Delta/South Africa Airways code-share operations granted January 5, 2000, and conditions therein**

(See Reverse Side)

Conditions: The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Delta rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Delta 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; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Delta's authority by virtue of the route integration exemption granted here, but that are not then being used by Delta, the holding of such authority by route integration will not be considered as providing any preference for Delta in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Remarks: With respect to the issue raised by American regarding South Africa third-country code-share designations, we view that matter as more appropriately addressed in the context of its pending application in Docket OST-99-6595, and we note that, in fact, American has raised this issue in that docket. American's application in Docket OST-99-6595 will be handled in a separate Department action, and our action here is without prejudice to any decision the Department might make with respect to it.

On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption 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.

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http://dms.dot.gov/reports/reports_aviation.asp*