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

Order 2000-7-25

Served: July 20, 2000

Issued by the Department of Transportation
on the 20th day of July, 2000

**U.S.- TURKEY THIRD-COUNTRY
CODE-SHARE OPPORTUNITIES**

Docket OST-2000-7148 - 14

ORDER TO SHOW CAUSE

SUMMARY

By this order, we tentatively select Delta Air Lines, Inc., Northwest Airlines, Inc., and United Air Lines, Inc., to serve Istanbul, Turkey, under code-share arrangements with third-country carriers, and we tentatively award each carrier 7 weekly frequencies to perform this service.

BACKGROUND

Currently only Delta and Turkish Airlines (THY) provide scheduled service between the United States and Turkey. Each carrier provides daily service between New York and Istanbul. In addition, THY provides three weekly flights between both Miami and Chicago, on the one hand, and Istanbul, on the other hand.

On May 3, 2000, the United States and Turkey signed an open-skies agreement which comes into full effect after a three-year transition period. Among other things, the new agreement permits U.S. carriers to provide third-country code-share combination services over a three-year transition period. Effective immediately through March 31, 2001, up to three U.S. airlines may serve Turkey via intermediate points under code-share arrangements with third-country airlines and collectively may operate up to 21 weekly frequencies.¹ In each of the next two years, two additional airlines may be authorized to serve and 14 additional frequencies will be available to all authorized airlines for a total of seven airlines and 49 weekly frequencies by April 1, 2002. Effective April 1, 2003, there will be no restrictions on the operation of third-country code-share combination services.

¹ The rights are provided for in a March 22, 2000 U.S.-Turkey Memorandum of Consultations (MOC) that set forth the text of an *ad referendum* open-skies agreement. The MOC also provides that the respective aviation authorities will permit operations consistent with the terms of the agreement on the basis of comity and reciprocity from the date of signature.

By Notice dated March 28, 2000, we invited applications from U.S. carriers interested in using the opportunities available in the first year of the transition period.

APPLICATIONS

Applications were filed by American Airlines, Delta Air Lines, Northwest Airlines, and United Air Lines. Each of the applicants proposes to operate code-share services between the United States and Istanbul via an intermediate European point with a third-country carrier, as follows: American with Swissair via Zurich; Delta with Air France via Paris; Northwest with KLM Royal Dutch Airlines via Amsterdam; and United with Lufthansa German Airlines via Frankfurt. American, Delta and United each requests 7 weekly frequencies for its proposed service. Northwest requests 14 weekly frequencies but alternatively, has expressed a willingness to accept an award of 7 weekly frequencies. All the carriers have stated that they will begin service as soon as all the necessary government approvals are received. Important features of the proposals are set forth in the attached Appendix. Each of the carriers argues that its proposal will provide valuable service opportunities to Turkey from a large number of U.S. cities and is therefore in the public interest.

American and THY also filed an application to offer bilateral code-share service in the U.S.-Turkey market under which American would place its designator code on THY's flights between New York, Miami, and Chicago, on the one hand, and Istanbul, on the other, as well as flights within Turkey, and THY would place its code on American's domestic flights for carriage of THY's Turkey-U.S. traffic.² We are granting the American/THY code-share application contemporaneously with our decision here.³

RESPONSIVE PLEADINGS

All of the applicants filed answers and replies.⁴

Northwest and United argue that the record in this case demonstrates that they should be awarded the third-country code-share authority and that each should be allocated at least seven frequencies, because their service proposals are superior, offering more on-line U.S.-Turkey service than the other applicants. In addition, Delta, Northwest, and United all state that American will have better code-share opportunities under its proposed bilateral arrangement with THY and that American should not be allowed to offer code-share services with both a Turkish carrier and a third-country carrier when that service would preclude another carrier from code sharing with a third-country airline. In this regard, Delta states that grant of third-country code-share authority to Delta, Northwest and United and bilateral code-share authority to American would benefit U.S.-Turkey travelers by offering new competitive daily service from four major alliances and also competition to American's proposed bilateral code-share service with THY.

² See Docket OST-2000-7151.

³ The new agreement authorizes bilateral code-share operations between airlines of the United States and airlines of Turkey without limitation. We are granting these authorities by separate notices of action taken in Dockets OST-2000-7150, 2000-7151, and 2000-7154.

⁴ Northwest's reply was accompanied by a motion for leave to file an otherwise unauthorized document. We will

American states that its proposals to provide code-share service with Swissair and THY will provide significant competitive benefits by greatly expanding the number of U.S. gateways with on-line service. Nevertheless, American states that the Department will have to consider whether a carrier should hold both types of code-share authority when it weighs competing applications in limited-entry markets. Should the Department not select American for third-country code-share authority because of its bilateral code-share service with THY, then American contends the Department should follow the same policy with respect to comparable circumstances in the pending applications involving code-share service in the U.S.-South Africa market.⁵

Delta, Northwest and United argue that American has filed a spurious application here to achieve an advantage in the pending U.S.-South Africa case. Delta further states that American's U.S.-Turkey code-share applications are not analogous to Delta's code-share situation in the U.S.-South Africa market because Delta did not initially request both bilateral and third-country code-share authority in that market. Instead, Delta argues that it acquired its bilateral code-share authority when a code-share partner changed from one U.S. carrier to another and, thus, that it has a right to retain its third-country code-share authority under the Department's grandfather policy.

American maintains that it has not filed a spurious application and states that if the Department eliminates American for dual code-share authority without comparing the relative merits of its proposal, then the Department should apply this same principle in other markets. It also states that Delta's distinction between this market and the South Africa market is without merit because it is based only on the chronology of when the authority was awarded.

Finally, United argues that the Department should authorize the third-country code-share services to begin no later than American's proposed bilateral code-share service since American filed an application here only to gain leverage in another case and, consequently, it has delayed a Department decision in this case.

TENTATIVE DECISION

We have tentatively decided to (1) select Northwest, United, and Delta to serve Turkey under their respective third-country code-share arrangements, and (2) allocate each of them 7 weekly frequencies to provide such service.

The 2000 U.S.-Turkey aviation agreement provides valuable opportunities for U.S. carriers to operate service between the U.S. and Turkey on a bilateral code-share basis and with third-country carriers. Currently, only one U.S. carrier serves the market with its own aircraft. We have also now authorized American to conduct bilateral code-share operations in the market with THY. Thus, implementation of the third-country code-share opportunities under the agreement represents a valuable opportunity to maximize the number of U.S. carriers serving Turkey and

⁵ Delta currently holds bilateral code-share authority with South African Airways and third-country code-share authority with Air France to serve the U.S.-South Africa market. In addition, one opportunity for third-country code-share services became available in November 1999. American and Continental have pending applications for the last available third-country code share available in this market. We are currently considering the issues in that case. See Order 99-1-5, Notice of Action Taken dated January 5, 2000, in Docket OST-2000-6556 and Dockets OST 2000 6505 and 6527

the level of competitive U.S.-Turkey services offered, thereby furthering the development of the market.

All four carriers have presented proposals that would benefit the public and all four are similar in certain respects. All would serve Istanbul with code-share service via a European connecting point with at least daily service and all propose to begin service immediately. Furthermore, all have similar layover times at the intermediate point--generally one to two hours and similar overall elapsed times for service between the U.S. and Turkey. In addition, overall each would offer nonstop-to-nonstop connecting service to a large number of U.S. cities, with Northwest and United serving the most U.S. cities, 13 and 12, respectively, followed by American and Delta serving 10 and 9 cities, respectively.

While in terms of service benefits the proposals have many comparable features, in terms of market structure considerations, we tentatively conclude that the selection of Northwest, United and Delta will clearly provide superior competitive benefits. Northwest and United are new entrants to the U.S.-Turkey market. The authorization of their services will facilitate services by two new carriers and competitive services by four U.S. airlines in the market. We tentatively find that this factor, coupled with the significant service benefits offered by their proposals, including service to the most U.S. cities, warrants the selection of United and Northwest for two of the three available authorizations.

The selection between American and Delta for the remaining authorization is closer, but, on balance, we believe that the selection of Delta will better maximize the benefits to the traveling public and our goal to promote competition in the market. Delta currently serves Turkey with its own aircraft, operating a daily flight in the Atlanta-Istanbul market and American will soon enter the market under its extensive code-share arrangement with THY involving service in three U.S.-Turkey gateway markets on 13 weekly flights, as well as services within Turkey beyond Istanbul and services within the U.S. beyond THY's gateways at New York, Miami, and Chicago. Thus, both Delta and American have or will have a presence in the market. Under their proposed third-country code-share arrangements with Air France and Swissair, respectively, each would operate comparable services to nearly the same number of the U.S. cities. Although both carriers' third-country code-share services would also involve cities served under their other Turkey services, American's service involves a greater degree of overlap. Delta's proposed third-country code-share services will complement its current nonstop services and will facilitate a broader range of competitive service by Delta with the third-country code-share services of Northwest and United and the bilateral code-share services by American and THY. On the other hand, American's third-country code-share service with Swissair would largely duplicate its code-share service with THY. In these circumstances, we tentatively conclude that Delta's proposed third-country code-share service with Air France provides greater service and competitive benefits in this case.

We emphasize that our decision here does not establish or reflect a policy, as suggested by American, that would preclude a carrier from holding both bilateral and third-country code-share authority in contested limited-entry markets. We believe that the public interest is better served by considering each situation on a case-by-case basis after a full review of the relative

competitive benefits each proposal would offer the market, as well as all other relevant circumstances. We have followed that approach here.⁶

With respect to the number of frequencies allocated to each code-share arrangement, we have tentatively decided to allocate each seven weekly frequencies, thereby affording each the ability to operate daily service in the market. Although Northwest had sought 14 weekly frequencies, it has made clear on the record of this proceeding that it would accept an allocation of seven weekly flights.

ECONOMIC AUTHORITY

Delta, Northwest, and United already hold the necessary underlying authority to conduct their proposed services and, thus, additional underlying authority for these carriers would not be necessary.⁷ With respect to statements of authorization for the proposed code-share services, Delta, Northwest, and United have blanket statements of authorization for their code-share services with Air France, KLM and Lufthansa, respectively, and consistent with those authorizations, each has filed the required notice of its proposed expansion of code-share services in the U.S.-Turkey market, subject to completion of the carrier selection procedures that are the subject of this order.

Consistent with our standard practice, we propose to subject the frequency allocations awarded in this case to our standard 90-day dormancy condition, whereby the frequencies would expire and revert automatically to the Department if they are not used for a period of 90 days.

ACCORDINGLY,

1. We tentatively select Northwest Airlines, Inc., United Air Lines, Inc., and Delta Air Lines, Inc. to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-Turkey market under their code-share arrangements with Air France (via Paris), KLM Royal Dutch Airlines (via Amsterdam), and Lufthansa German Airlines (via Frankfurt), respectively, and tentatively allocate each carrier seven weekly frequencies for these services;
2. We direct all persons to show cause why we should not issue an order making final our tentative findings and conclusions;
3. We direct interested persons wishing to comment on our findings and conclusions, or objecting to the issuance of the order described above, to file their comments or objections with the Department, Dockets, Docket OST-2000-7148, U.S. Department of Transportation, 400

⁶ We are unpersuaded by United's arguments that American should not be permitted to commence its bilateral code-share services with THY until the limited third-country code-share services have also been approved. American's code-share application was not contested and is fully consistent with the new aviation agreement with Turkey. The third-country code-share services at issue here require further regulatory procedures before they can be implemented. We find no public interest basis to withhold valuable services to the public by deferring authorization of the American/THY services. We intend to complete our processing of this case expeditiously to facilitate operation by all of the code-share services authorized.

⁷ Delta Route 616 (Order 91-10-33), and Statement of Authorization approved August 6, 1998. Northwest exemption (Notice of Action Taken dated March 17, 1997, Docket OST-96-1270) and Statement of Authorization approved January 5, 2000, Docket OST-99-6501. United Routes 57 and 603 and integration exemption (Order 91-2-5 and Notice of Action Taken dated April 8, 1999, Docket OST-97-2126) and Statement of Authorization (Order 98-4-8)

Seventh Street, SW, Room PL-401, Washington, D.C. 20590, no later than 7 calendar days from the date of service of this order; answers thereto shall be filed no later than 3 calendar days thereafter; ⁸

4. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action; ⁹
5. If no objections are filed to our tentative decision on the award of the three third-country code-share opportunities and frequencies, we shall deem all further procedural steps to have been waived, and will proceed to enter a final order;
6. We grant Northwest's motion for leave to file an otherwise unauthorized document in the captioned docket;
7. To the extent not tentatively granted, we tentatively deny all requests in the captioned docket; and
8. We will serve this order on American Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; the Ambassador of Turkey in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

A. BRADLEY MIMS
Acting Assistant Secretary for
Aviation and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

⁸ The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system. Alternatively, we encourage filers to use the electronic submission capability available through the Dockets/DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site.

⁹ As we are providing for the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order.

U.S.-TURKEY THIRD-COUNTRY CODE-SHARE APPLICATIONS

3 Carrier Designations and 21 Weekly Frequencies Are Available

Carrier	Code-Share Partner	Intermediate Point	Point in Turkey	U.S. Gateway Points	Weekly Frequencies Requested
American	Swissair	Zurich	Istanbul	10: ATL, BOS, CHI, DFW, LAX, MIA, NYC, EWR, SFO, WAS	7
Delta	Air France	Paris	Istanbul	9: ATL, BOS, CHI, CVG, LAX, NYC, PHL SFO, WAS	7 Delta currently operates seven weekly flights in the U.S.-Turkey market with its own aircraft
Northwest	KLM	Amsterdam	Istanbul	13: ATL, BOS, CHI, DTW, HOU, NYC, LAX, EWR, WAS, MSP, MEM, SFO, SEA	7 or 14
United	Lufthansa	Frankfurt	Istanbul	12: ATL, BOS, CHI, WAS, EWR, DFW, DTW, IICU, LAX, NYC, PHL, SFO	7

Note: All the carriers propose to start up as soon as they receive the necessary governmental approvals.