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

Issued by the Department of Transportation on December 29, 2000

NOTICE OF ACTION TAKEN -- DOCKET OST-2000-8554- 4

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 Canada Regional, Inc. d/b/a Air Ontario, Air Nova, AirBC & Canadian Regional

Date Filed: December 15, 2000

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 Canada and any point or points in the United States; and charter operations between any point or points in Canada and any point or points in the United States, and other charters pursuant to 14 CFR 212 of the Department's regulations.

--Statement of authorization under 14 CFR 212 to the extent necessary to permit the applicant to display the designator code of Air Canada on its proposed services to/from the United States.

If renewal, date and citation of last action: Applicant is the successor to Air Ontario, Air Nova, AirBC, and Canadian Regional, all of which hold current Department authority to conduct the operations at issue here.

Applicant representative: Anita Mosner 703-312-1446

Responsive pleadings: On December 21, 2000, Alaska Airlines, Inc. (Alaska) filed an answer to the application. Alaska does not oppose the request and states that it does not want to unreasonably delay the Department's approval of the request. However, it states that, as a result of Air Canada's acquisition of Canadian Airlines International (CAI), Alaska lost its codeshare partner in the U.S.-Canada market, leaving United Air Lines as the only U.S. carrier with extensive access to Canada. Alaska states that this situation makes more problematical the structural impediments which remain in the U.S.-Canada aviation relationship, particularly the bilateral limitation on a U.S. carrier's ability to hold out single flight number sixth-freedom service from/to third-country markets. Alaska believes that the U.S. Government should make clear to the Government of Canada that, in light of the effect of the Air Canada/CAI acquisition, the Government of Canada should remove this flight number restriction, at least in the Canada-U.S.-Mexico market. Finally, Alaska states that we should make clear to the Government of Canada that we reserve the right to decline to exercise discretion on Canadian applications, or to review the antitrust immunity we granted to Air Canada and United in Order 97-9-21, if Canada does not remove the third-country restrictions. On December 22, 2000, Air Canada Regional (ACR) filed a reply, noting that Alaska does not oppose its request, and that the requested authority is provided for in the U.S.-Canada agreement.

DISPOSITION

Action: Approved

Action date: December 29, 2000

Effective dates of authority granted: December 29, 2000 - December 29, 2001

Remarks: The requested authority is provided for in the United States-Canada Air Transport Agreement. We found that ACR is operationally and financially qualified to conduct the operations it proposes, and that it is substantially owned and effectively controlled by citizens of Canada. With respect to the concerns raised by Alaska, we agree with its view that the U.S.-Canada agreement should be further liberalized to achieve "Open Skies," which would give Alaska the operational flexibility it seeks in sixth-freedom third-country operations. We fully intend to continue our efforts toward that goal. At the same time, however, we have determined that those concerns do not warrant our withholding or conditioning the bilaterally-provided-for authority which ACR is seeking here. Moreover, we note that the antitrust immunity we granted Air Canada and United in Order 97-9-21 did not immunize third-country operations (the focus of Alaska's concerns).

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

Standard exemption conditions (attached)

Code-share conditions (attached)

Special Conditions: In the conduct of these operations, Air Canada Regional must adhere to all applicable provisions of the U.S.-Canada Agreement. In the conduct of these operations, the all-cargo services are subject to the condition that points in the territory of the United States shall not be combined on any same plane scheduled or nonscheduled all-cargo courier service operated with aircraft having a maximum certified takeoff weight greater than 35,000 pounds. In the conduct of the charter operations authorized above, Air Canada Regional may, without prior Department approval, carry charter traffic between the United States and a third country point, provided that such charter traffic is carried on a flight that serves Canada for purposes of carrying traffic between the United States and Canada. Further, in addition to the authority noted above, Air Canada Regional may also conduct operations beyond points in the United States to points in third countries that it holds authority to serve, without local traffic rights between points in the United States and such other points in third countries (*i.e.*, on a blind sector basis).

**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) our action was consistent with Department policy; (2) grant of the 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/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/reports/reports_aviation.asp*

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

Conditions:

(a) The carrier(s) must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. Such notices should be filed in Docket OST 2000-8554.

(b) The carrier(s) must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. We expect this notification to be received within 10 days of such non-effectiveness or of such decision. Such notices should be filed in Docket OST 2000-8554.

(c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected.

(d) The authority granted here is specifically conditioned so that neither carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.