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Order 2001-8-8

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

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on the 7th day of August, 2001

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U.S.-Vietnam Third-Country Code-Sharing Opportunities

Docket OST-2000-7194- 42

SHOW-CAUSE ORDER

Summary

By this order, we tentatively award Delta Air Lines, Inc., Northwest Airlines, Inc., and United Air Lines, Inc. seven weekly frequencies each for U.S.-Vietnam third-country code-sharing services. We will afford interested parties 10 calendar days to comment on our tentative decision.

Background

The Memorandum of Discussions (MOD), signed by the United States and Vietnam in March 2000, states the intent of the respective authorities to allow, *inter alia*, third-country code-sharing of passenger air transportation in the U.S.-Vietnam market (via intermediate points) on the basis of comity and reciprocity.[1] Specifically, the MOD provides that up to three cooperative marketing arrangements between any number of U.S. airlines and any number of third-country airlines may be authorized.[2] The code-share arrangements may serve between any points in the United States, on the one hand, and up to three Vietnamese points selected by the United States (via any intermediate points), on the other hand.[3] The MOD provides for a total of 21 weekly round-trip frequencies for use by U.S. carriers to operate these services.

The Department received applications for the available authority from American Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc. and United Air Lines, Inc. By Order 2001-5-27, the Department granted motions of Northwest and United to amend their applications and afforded the other current applicants the opportunity to amend their applications. It also gave interested parties a further opportunity to file applications for the authority at issue.

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[1] The MOD does not contemplate direct service between the United States and Vietnam.

[2] As provided in the MOD, one arrangement involves a U.S. carrier jointly marketing services with any number of third-country airlines. The MOD also provides that U.S. carriers with existing code-share arrangements with each other may also put their codes on the third-country carrier flights. The MOD states that the U.S. and Vietnamese carriers may form an unlimited number of bilateral code-sharing arrangements with each other on an unrestricted basis with respect to frequencies.

[3] The three points selected by the United States may be changed subject to a 30-day advance notice requirement.

We received no new applications.[4]

Applicant Proposals

Delta proposes daily services to Vietnam with its code-share partner Air France from eleven U.S. gateways.[5] Delta's operations would be all transatlantic via Paris and Bangkok, with four weekly flights to Ho Chi Minh City and three weekly flights to Hanoi.

Northwest proposes daily services to Vietnam with its partners Malaysia Airlines (MAS) and KLM Royal Dutch Airlines (KLM), with the final leg, *i.e.*, the leg into Vietnam itself, in every case being operated by MAS from Kuala Lumpur. Those flights would include four weekly round-trip flights to Ho Chi Minh City and three weekly round-trip flights to Hanoi. Northwest would bring its passengers to Kuala Lumpur via both transpacific and transatlantic routings. MAS would operate flights carrying Northwest's code from Los Angeles to Kuala Lumpur seven times per week. Northwest or KLM, carrying Northwest's NW code, would operate flights between 14 U.S. gateways and Amsterdam.[6] From Amsterdam, service on to Kuala Lumpur would be operated by either KLM or MAS.

United seeks 21 weekly frequencies in conjunction with its code-share partners All Nippon Airlines (ANA), Thai Airways International (Thai), and Lufthansa German Airlines (Lufthansa). With 21 weekly frequencies, United states it would serve Hanoi, Da Nang, and Ho Chi Minh City as follows: 2 weekly round-trip flights with ANA over Tokyo to Ho Chi Minh City; 10 weekly round-trip flights with Thai over Bangkok to Ho Chi Minh City; 2 weekly round-trip flights with Lufthansa over Frankfurt to Ho Chi Minh City; 4 weekly round-trip flights with Thai over Bangkok to Hanoi; and 3 weekly round-trip flights with Thai over Bangkok to Da Nang.[7]

Subsequent to filing the 21-frequency proposal, which United maintains it would prefer to operate, United, in response to a Joint Motion of Delta and Northwest (see below), submitted a nine-frequency proposal to Ho Chi Minh City.[8] Under this proposal, United's services would include twice weekly nonstop-to-nonstop connections to Ho Chi Minh City via Tokyo from seven U.S. gateways with ANA,[9] and seven frequencies for daily two-stop services to Ho Chi Minh City in conjunction with Thai via Bangkok from seventeen U.S. cities; these services with

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[4] American moved to withdraw its application. We will grant the motion.

[5] The eleven U.S. gateways are: Atlanta, Boston, Chicago, Cincinnati, Dallas/Ft. Worth, Los Angeles, Miami, New York, Philadelphia, San Francisco, and Washington DC.

[6] The fourteen U.S. gateways are: Atlanta, Boston, Chicago, Detroit, Houston, Los Angeles, Memphis, Miami, Minneapolis, Newark, New York (JFK), San Francisco, Seattle, and Washington DC.

[7] Included in its 21-frequency proposal United states that its minimum request is for seven frequencies to be applied as follows: Tokyo-Ho Chi Minh City, 2 weekly round trips, with code-share partner ANA; and Bangkok-Ho Chi Minh City, 5 weekly round trips, with code-share partner Thai.

[8] United states that its services are to be operated on a year-round basis in all markets subject to seasonal adjustments in times or days of operation in eleven city pairs. Those city pairs and the carriers involved are: Boston/Frankfurt; San Francisco/Munich; and Chicago/Frankfurt (Lufthansa); Washington Dulles/Tokyo Narita; San Francisco/Tokyo Narita (ANA); Los Angeles/London Heathrow; Denver/Frankfurt; San Francisco/London Heathrow; and Chicago/London Heathrow (United).

[9] The seven U.S. gateways for the United/ANA service are: Honolulu, Washington, New York (JFK), Los Angeles, Chicago, Seattle, and San Francisco.

Thai would operate via Bangkok and either a transpacific intermediate point (Tokyo and Taipei) or a transatlantic intermediate point in Europe (London, Paris, Frankfurt and Munich).[10]

Joint Motion

On June 6, 2001, Delta and Northwest filed a joint motion for an immediate allocation of opportunities and to terminate the proceeding. United submitted an answer in partial opposition to the joint motion. Delta and Northwest filed separate replies, and Northwest filed a surreply.[11]

Delta and Northwest urge the Department to take immediate action to allocate each of the three remaining applicants seven weekly frequencies for their proposed third-country code-sharing services. They further urge that the Department award the code-share frequencies without restriction as to the applicant carrier's choice of alternative code-share partners or routings.

United strongly opposes the aspect of the joint motion which would grant in full the frequency allocation applications of Delta and Northwest but would reduce United's request by 2/3 in order to give each applicant seven frequencies. United states that while it recognizes that it cannot expect to receive all of the frequencies it needs to code share on all of its three code-share partners' Vietnam services, it urges the Department to allocate United at least a total of 9 U.S.-Vietnam frequencies so that it can offer a daily pattern of service to Ho Chi Minh City, the largest U.S.-Vietnam market, over both transpacific and transatlantic routings. United argues that the proposals of Delta and Northwest would result in a relative waste of six frequencies since they would each offer three weekly services to the much smaller Hanoi market. United, however, agrees with Delta and Northwest that the frequencies should be awarded without restriction as to code-share partners or routings, noting that unrestricted frequencies will afford the carriers flexibility to change partners and routings as schedules change over time in order to maximize consumer benefits by applying frequencies to the best available connecting services.

Delta and Northwest maintain that United's request for nine weekly frequencies would produce less competition with fewer competitive benefits and that a more equitable solution would be to ensure balanced U.S.-flag competition in the U.S.-Vietnam market among three strong U.S. carriers. They also note that even with the equitable division they propose, United would still be able to offer daily service to Ho Chi Minh City. Finally, Delta states that should the Department decide to give United more than its pro-rata share of frequencies, the Department should then reduce Northwest's award and not Delta's.

Northwest disagrees with Delta on this last point and urges the Department promptly to allocate the code-share opportunities and frequencies as proposed in the Joint Motion.

Decision

We have tentatively decided to award all three U.S. carrier applicants seven weekly frequencies for U.S.-Vietnam third-country code-share services.

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[10] The seventeen U.S. gateways for the United/Thai service are: Atlanta, Boston, Denver, Dallas/Ft. Worth, Detroit, Newark, Washington DC, Honolulu, Houston, New York (JFK), Los Angeles, Miami, Chicago, Phoenix, Philadelphia, San Francisco, and Seattle. Some of the transatlantic legs, as well as the Frankfurt-Bangkok leg, are operated by Lufthansa with United's UA code.

[11] Northwest's reply and surreply were accompanied by motions for leave to file, which we are granting.

The U.S.-Vietnam market has been effectively closed to U.S. carrier service for a number of years. We now have the opportunity for three U.S. carriers to have limited access to this developmental market and believe it is important that the public be afforded the full variety of opportunities that multiple carrier service can offer. Under these circumstances, we tentatively conclude that the public interest would be best served by awards that allow each U.S. carrier to begin competition from a common base of frequencies, and by not emphasizing one Vietnamese city over another. Therefore, we are not convinced that United's Ho Chi Minh City-only proposal for nine weekly frequencies outweighs the service proposals of the other two applicants. Specifically, we are not persuaded that the asserted desire on United's part to secure daily service to Ho Chi Minh City over both transatlantic and transpacific routings carries such substantial public interest weight as to outweigh the public interest of opening service to Vietnam on an equal footing. We believe that in the circumstances presented, the three applicant carriers should have an equal opportunity to enter and develop the newly reopened Vietnam market with their code-share partners. Therefore, we tentatively conclude that each of the U.S. carrier applicants should receive seven weekly frequencies for third-country code-share opportunities in the U.S.-Vietnam market.

We propose that the code-share participants initially should be those partners as stated in the applications before us. The applicants would be free, however, to expand their code-sharing partners through use of the 30-day notification process, where applicable, provided such services are operated within the frequencies allocated. We further propose that the frequencies tentatively allocated here be subject to the standard code-share conditions, in particular the 30-day notice requirement specifying cities of operation and, in this case, code-share partners as well, since two of the applicants have more than one partner. Furthermore, we propose that these frequencies be subject to the standard dormancy condition which provides that any frequencies not operated for a period of 90 days will automatically return to the Department for reallocation. To this extent, we would provide that the 90-day dormancy period would begin on the date of service of a final order in this case.

In addition to the frequency allocation, we propose to award Delta and Northwest the exemption authority they need to operate their respective proposed services.[12] Since United already holds certificate authority for services between the United States and Vietnam, we would simply award it the frequency allocation.[13]

ACCORDINGLY,

1. We tentatively allocate Delta Air Lines, Inc., Northwest Airlines, Inc., and United Air Lines, Inc. each seven weekly frequencies for third-country code-sharing services;

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[12] Inasmuch as there is no agreed designation provision between the United States and Vietnam, no formal designations will be required here. We will, however, notify the Vietnam Government through diplomatic channels of our selections in this proceeding.

[13] In its original application, United states that Thai will separately request a statement of authorization under 14 CFR Part 212 to display United's designator code on the United/Thai code-share flights. That application is filed in Docket OST-2000-7124 and will be acted upon separately. We note that the Delta/Air France and the Northwest/Malaysia code-share relationships have blanket statements of authorization for code-share services and only require a notice of intent to serve additional points, and that both Delta and Northwest have so stated in their respective applications.

2. We tentatively conclude that the frequencies tentatively awarded in ordering paragraph one should not be restricted as to code-share partner and/or routing, but shall be subject to all of the standard conditions placed on code-sharing authority (e.g. 30-day advance notification of points to be served), as well as a 30-day advance notification or separate authorization of the code-share partner for the services offered, as applicable;[14]

3. We tentatively conclude that the frequencies tentatively allocated in ordering paragraph one, above, shall be subject to the Department's standard dormancy condition wherein the frequencies will automatically return to the Department for reallocation, should the frequencies not be operated for a period of 90 days;[15]

4. We direct any interested parties having objections to our tentative decisions set forth in this order and in ordering paragraphs 1 through 3 above to file their objections with the Department, Dockets in Docket OST-2000-7194, U.S. Department of Transportation, 400 Seventh Street SW, Room PL-401, Washington DC 20590, no later than ten calendar days from the service date of this order; answers thereto shall be filed no later than five calendar days thereafter;[16]

5. 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;[17]

6. If no objections are filed, we will deem all further procedural steps to have been waived, and will proceed to enter a final order;

7. We grant the motion of American Airlines, Inc. to withdraw its application and related pleadings;

8. We grant all motions for leave to file otherwise unauthorized documents; and

9. We will serve this order on American Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; Société Air France; Malaysia Airlines; KLM Royal Dutch Airlines; All-Nippon Airways; Thai Airways International; Lufthansa German

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[14] We would consider the notification requirement satisfied for the points and partners stated in the applications in this proceeding. New service points and the addition of code-share partners would require notification or a separate application for a statement of authorization, if necessary.

[15] Carriers would be required to notify the Department of a decision not to operate the frequencies within ten days of such a decision.

[16] 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 imaging system. In the alternative, the filers may use the electronic submission capability available through the Dockets DMS Internet site (http://dms.dot.gov) by following instructions on the web site.

[17] As we are providing for the filing of objections to our tentative decisions and all applicants have urged the Department for expedition, we will not entertain petitions for reconsideration of this order.

Airlines; the Ambassador of Vietnam in Washington DC, the Federal Aviation Administration; and the U.S. Department of State (Office of Negotiations).

By:

SUSAN MCDERMOTT
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

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