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

Issued by the Department of Transportation on August 23, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST-2001-10172 - 6

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).

In the Matter of *2001 China Code-share Points Case*:

Under the 1999 U.S.-China Protocol, U.S. carriers may offer code-sharing services to points in China on a phased-in basis.¹ Effective April 1, 2001, U.S. carriers can serve an additional nine Chinese points for their code-share services.² By Order 2001-7-10, the Department selected three of those nine points. By Order 2001-8-16 the Department selected a further four points. It also instructed American Airlines and Delta Air Lines to choose one additional code-share point each from those requested in their respective applications in this docket and to notify the Department and other parties of their selections. Order 2001-8-16 stated that once we had received this notification, we would grant the parties to the proceeding the necessary regulatory authority to serve the cities and would request the Department of State to forward such selection(s) as additional code-share points to the appropriate Chinese authorities.

On August 22, 2001, we received notification from the two carriers regarding their selections. American selected Shenzhen, People's Republic of China, and Delta selected Nanning, People's Republic of China.

In accordance with the provisions of Order 2001-8-16, we are granting the U.S. carriers and their Chinese code-share partners the necessary regulatory authorities for their code-share services between the United States and Shenzhen and Nanning, People's Republic of China. Specifically, we (a) grant American, Delta, Northwest, and, to the extent necessary, China Eastern³ exemptions under 49 USC 40109 to engage in scheduled foreign air transportation of persons, property and mail between any points in the U.S. and Shenzhen and Nanning, People's Republic of China, and (b) amend the Statements of Authorization granted in Order 2001-8-16, to permit China Eastern Airlines Corporation Limited, China Southern Airlines Company Limited, and Air China International Corp. to display the designator codes of their respective U.S. carrier partners between their respective Chinese gateways and Shenzhen and Nanning, People's Republic of China.

Applicant rep: Carl B. Nelson (American) (202) 496-5647; Robert E. Cohn (Delta & China Southern) (202) 663-8060; Megan Rosia (Northwest & Air China) (202) 289-6834; Evelyn Sahr (China Eastern) (202) 289-0500
DOT Analyst: Linda W. Senese (202) 366-2367

DISPOSITION

XX Granted (subject to conditions) (See Remarks below)

The exemption authority granted was effective when taken: **August 23, 2001**, and will remain in effect through July 17, 2003, for American Airlines, Delta Air Lines, and Northwest Airlines, and through July 17, 2002, for China Eastern Airlines Corporation.⁴

The amended statements of authorization for China Eastern Airlines Corporation Limited, Air China International Corp., and China Southern Airlines Company Limited were effective when taken: **August 23, 2001**, and will remain in effect indefinitely, subject to the conditions noted below.

(See Reverse Side)

¹ Six points became available in April 2000 and were selected in September 2000.

² An additional five points will become available on April 1, 2002.

³ See Order 2001-8-16 at 3, fn. 3.

⁴ For administrative convenience, we have made the exemption authority awarded here coextensive with the exemption awards granted in Order 2001-7-10.

**Action taken by: Paul L. Gretch
Director, Office of International Aviation**

XX Authority granted is consistent with the Air Transport Agreement and the 1999 U.S.-China Protocol between the United States and the People's Republic of China.

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

XX Standard Exemption Conditions (attached)

XX Holder's Certificate of Public Convenience and Necessity (American, Delta, Northwest)

XX Holder's Foreign Air Carrier Permit (China Eastern)

XX Statements of Authorization authorized Chinese/U.S. carrier code-share services in Order 2001-8-16, and conditions therein

On the basis of data officially noticeable, we found the U.S. and foreign applicants qualified to provide the services authorized.

Under the 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, 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.

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

Attachment

U.S. CARRIER
Standard Exemption Conditions

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations, including all FAA requirements concerning security; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

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).

