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Order 2001-6-11

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

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on the 18th day of June, 2001

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

Docket OST-2001-8781 - 24

FINAL ORDER

SUMMARY

By this order, we make final our tentative decision in Order 2001-5-4 to select Northwest Airlines, Inc., and United Air Lines, Inc., to serve Turkey, under code-share arrangements with their respective third-country code-share partners, and to award each carrier seven weekly frequencies to perform its service.

BACKGROUND

The U.S.-Turkey aviation agreement, signed May 3, 2000 (the Agreement), permits U.S. carriers to provide third-country code-share combination service on a phased-in basis over a three-year transition period.¹ Pursuant to our award of authority for the first year of the transition period,

¹ The rights are provided for in a March 22, 2000 U.S.-Turkey Memorandum of Consultations (MOC) that sets forth the text of an *ad referendum* open-skies agreement. The MOC 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 of the agreement, pending its entry into force. In addition to the third-country code-share services at issue here, the agreement provides for direct services and for bilateral code-share services. There are no limitations on direct or bilateral code-share authorities. Currently Delta Air Lines and Turkish Airlines (THY) provide direct scheduled service between the United States and Turkey. Delta provides seven weekly flights (Delta also provides seven weekly third-country code-share flights with Air France) and effective June 21, THY will provide sixteen weekly flights. Delta provides daily service between New York and Istanbul and THY will operate eight weekly flights from New York. In addition, THY will serve the Istanbul market with six weekly flights from Chicago and two weekly flights from Miami. American Airlines offers service in the U.S.-Turkey market from New York, Chicago and Miami under its code-share arrangement with THY on flights operated by THY. *Official Airline Guide*, International Edition, June 2001. Northwest and United offer seven weekly third-country code-share flights each with their respective code-share partners.

Delta, Northwest, and United provide service between the United States and Istanbul under code-share arrangements with third-country carriers via various points in Europe, with each carrier offering seven weekly code-share frequencies.²

The Agreement provides that during the second year of the transition period, effective April 1, 2001, two additional airlines may be authorized for third-country code-share service and 14 additional frequencies will be available to all authorized airlines for a total of five airlines and 35 weekly frequencies.

In response to a Department notice inviting applications, four U.S. carriers currently serving the market applied for the available opportunities: Northwest with KLM, United with Lufthansa, Delta with Air France, and American with Swissair. By Order 2001-5-4, we tentatively selected Northwest to serve Istanbul and United to serve either Istanbul or Ankara under third-country code-share arrangements with their respective partners, and tentatively allocated each carrier seven weekly frequencies for its services.

RESPONSES TO ORDER 2001-5-4

American and Delta filed objections to our tentative decision. Northwest and United filed answers to the objections. American filed a response to United's answer and United filed a rejoinder.³

American states that its proposal to provide code-share service with Swissair would represent American's first third-country code-share service to Turkey and would permit service to 10 U.S. gateways instead of only the three U.S. cities under its existing bilateral code-share service with THY. American states that granting additional opportunities to Northwest and United would not result in any new U.S. gateway cities served by those carriers. Furthermore, American states that its proposal provides service to more U.S. cities than Northwest's proposal and connecting times that are more effective competitively.

Delta states that its proposal is superior to Northwest's, with better eastbound travel times for eight commonly served U.S.-Turkey markets, including Los Angeles and San Francisco. Delta also states that it would not be in the public interest to authorize United's service to Ankara, a point with far fewer U.S. passengers than Istanbul, at the expense of Delta's Istanbul proposal.

Both American and Delta argue that United should not be awarded new authority here because it has made ineffective use of its existing Turkey frequencies by failing to implement its proposal from last year and instead is using connections with a less well-timed Lufthansa flight. Thus, they state that United does not need an additional award here, since it could provide improved third-country code-share service simply by switching the connecting flight currently used at Frankfurt for its code-share service.

² See Orders 2000-7-25 and 2000-8-17.

³ The response and rejoinder of American and United were accompanied by motions for leave to file otherwise unauthorized documents. In the interest of a complete record, we will grant the motions.

Northwest and United state that the objecting parties have not provided any new arguments or cited any error in the Department's tentative decision, but rather have merely reiterated arguments fully considered in the tentative decision. They state that Delta and American already offer at least twice the level of service of Northwest and United. In addition, Northwest and United state that, unlike their proposals, the proposed expanded services of the objecting parties would not offer superior connections to those now offered by the carriers on their existing services. United further states that neither objecting party contends that its proposal is superior to United's.

United states that, while disappointed that it was not allocated all 14 frequencies it sought, it did not object to our tentative decision and it plans to use the seven frequencies awarded here to serve Ankara. While it needs both morning and afternoon connections to optimize its Istanbul service, United states that the Ankara market currently has no U.S.-carrier online service.⁴

In response, American argues that its proposal to serve Istanbul with Swissair offers greater public benefits than United's plan to use the frequencies for service to Ankara. American further states that United has again made the same proposal to serve Istanbul as last year but it does not plan to implement it until the end of this year. American argues that this compromises the integrity of the selection process and does not maximize the competitive options in limited-entry markets.

United states that the interim restrictions on third-country code-share services are designed to protect American's partner THY and that, consequently, American enjoys the benefit of this protection, whereas United's code-share operations remain restricted under the transitional agreement. United also states that American's comments with respect to United's use of its existing code-share frequencies are groundless and that United has in fact engaged in rational decision-making for the commercial purpose of providing as many of its customers as possible with the best service available in a limited market.

DECISION

We have decided to make final our tentative decision to authorize Northwest and United to increase their services to Turkey under their third-country code-share arrangements with their respective partners.

The 2000 U.S.-Turkey aviation agreement provides valuable opportunities for U.S. carriers to operate code-share services between the United States and Turkey. Currently, four U.S. carriers are providing services to Turkey either directly or under various code-share arrangements. The implementation of the next phase of transitional third-country code-share rights under the agreement represents an important opportunity to increase competition in the market and the range of travel options available to consumers.

⁴ United plans to operate its existing westbound Istanbul-Frankfurt segment on Lufthansa's afternoon flight until the end of the year when it will switch to an earlier Lufthansa flight.

In our show-cause order, we tentatively found that the selection of Northwest and United would best enhance the competitive structure of the market, since these carriers offer fewer frequencies than Delta and American, each of which now offers at least fourteen weekly flights between the U.S. and Turkey. We also tentatively found that additional awards to Northwest and United would most improve services in the market by improving on-line services or adding service to an additional city in Turkey, whereas additional awards to Delta and American would offer no superior on-line services to those now offered by the carriers on their existing services.

Neither of the objecting parties has provided any new arguments or evidence that persuades us to modify our tentative decision. Rather, they have reiterated arguments already raised and considered in our show-cause order.

In particular, American maintains that its proposal to offer a new U.S./foreign carrier code-share service in the market with Swissair better serves to expand the service options for U.S.-Turkey passengers than would expanded operations by either Northwest or United, and both American and Delta contend that their proposed Istanbul services offer greater benefits than United's proposal to serve Ankara. We fully considered and addressed American's and Delta's arguments in our tentative decision, including the relative public benefits of United's proposal to serve Ankara.

Both Delta and American now offer at least twice the level of services offered by Northwest and United in the U.S.-Turkey market. Given these services and competitive structure of the market, additional awards to Northwest and United would increase competition among the four U.S. carriers offering service without affording any one carrier a significantly greater advantage over the others during the transitional service period, which, until the period ends in April 2003, will restrict the ability of U.S. carriers to offer third-country code-share services. Furthermore, as we noted in our show-cause order, and not disputed by either carrier, awards to American and Delta would result in no significant improvement in the connections that these carriers can now provide the U.S. cities encompassed by their proposals on their existing services. On the other hand, an award to Northwest will provide that carrier with sufficient frequencies to offer convenient round-trip connections to all fourteen cities encompassed by its proposal, a significant improvement over the connections that it can provide with only seven weekly frequencies. An award to United, in addition to the competitive benefit it offers, will expand the range of U.S. carrier on-line service to an additional destination in Turkey. Thus, while we do not dispute that the proposals of American and Delta would offer certain public benefits--an additional U.S./foreign carrier service choice in the case of American and a second frequency with Air France in the case of Delta--we are not persuaded that these benefits, given the services already provided by these carriers, outweigh the service and competitive benefits offered by additional awards to Northwest and United.

Nor are we persuaded by the criticisms by American and Delta of United's proposed Ankara service. The U.S.-Istanbul market, while clearly larger than the U.S.-Ankara market, is considerably more developed, and now receives over 50 weekly direct and code-share services, or over seven daily flights. United's Ankara service will foster development of that market as well. In these circumstances and given the level of services and carrier choices already available in the Istanbul market, we are not persuaded that authorization of additional services in the

Istanbul market outweighs the service and competitive benefits of an additional award of frequencies in this proceeding to United.⁵

ECONOMIC AUTHORITY

As discussed in our show-cause order, Northwest and United already hold the necessary underlying authority to conduct their proposed services and, thus, additional underlying authority for these carriers is not necessary.⁶ In addition, each of the proposed code-share relationships holds blanket authority for their code-share services in the U.S.-Turkey market and each has filed the required notices for expansion of its services, subject to the completion of the carrier selection procedures here. With the final order, each relationship will hold all the necessary authority to commence the operations as authorized.⁷

ACCORDINGLY,

1. We make final our tentative findings and conclusions in Order 2001-5-4;
2. We select Northwest Airlines, Inc., and United 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 KLM Royal Dutch Airlines (via Amsterdam), and Lufthansa German Airlines (via Frankfurt or Munich), respectively;
3. We allocate seven weekly frequencies each to Northwest Airlines, Inc., and United Air Lines, Inc., for U.S.-Turkey third-country code-share services, subject to the following conditions:
 - (a) The frequencies will remain in effect only as long as each carrier continues to hold the necessary underlying authority to serve the U.S.-Turkey market and a third-country code-share authorization for these services, and
 - (b) The frequency allocation will expire and any frequencies not used for a period of 90 days will revert automatically to the Department;⁸
4. We grant the motions of American Airlines and United Air Lines for leave to file otherwise unauthorized documents;

⁵ American and Delta maintain that an award of frequencies to United here “rewards” United for not fulfilling its service proposal in last year’s proceeding for authorization of U.S.-Turkey third-country code-share services. We disagree. We have simply concluded, based on the record before us, that United’s proposal would offer greater service and competitive benefits than the proposals of American or Delta.

⁶ See, Northwest exemption (Order 97-5-6 and Notice of Action Taken dated March 17, 1997, Docket OST-96-1270) and United Routes 57 and 603 and integration exemption (Order 91-2-5 and Notice of Action Taken dated March 2, 2001, Docket OST-97-2126).

⁷ Order 2001-5-4 at 6. United provided such notice in its application in this docket. Northwest expressed its intention to provide the required notice in Docket OST-99-6501 and, on August 2, filed the required notice for its expanded service in the U.S.-Turkey market.

⁸ As both carriers stated that they were prepared to begin their code-share services immediately, the 90-day dormancy period will begin on the date of service of this order.

5. We may amend, modify, or revoke the authority granted by this order at any time at our discretion without hearing;
6. To the extent not granted, we deny all requests in the captioned docket; and
7. We will serve this order on American Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; the Houston Parties; 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:

SUSAN McDERMOTT
Deputy Assistant Secretary for
Aviation and International Affairs

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