

161358

Order 2002-3-24



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

Issued by the Department of Transportation
on the 27th day of March, 2002

Served: March 27, 2002

Application of

American Airlines, Inc.

for waiver of dormancy condition
(U.S.-Ukraine third-country code-share
designation)

Docket OST-2000-7784 - / /

ORDER

BACKGROUND

By Order 2000-8-11, following our consideration of the record in a contested carrier selection case, we granted American exemption authority to conduct third-country code-share services in the U.S.-Ukraine market and allocated it 3.5 weekly frequencies to serve Kiev via Zurich under a third-country code-share arrangement with Swissair. That award was subject to the condition that the frequencies would expire automatically and revert to the Department for reallocation if not used for a period of 90 days. American notified the Department on November 8, 2001, that it had terminated its code-share arrangement with Swissair. Under the terms of its authorization American's frequencies would have automatically reverted to the Department on February 7, 2002. However, following the events of September 11, 2001, the Department issued Order 2001-11-15 granting all U.S. carriers a blanket waiver of the dormancy conditions related to their international route authorities through March 31, 2002, thereby extending the date on which the frequencies would automatically revert, absent a further waiver of the dormancy condition. The Department stated that it would entertain applications to extend the dormancy waiver in specific limited-entry city-pair markets when the carrier could demonstrate that circumstances warranted.

By application filed February 15, 2002, American seeks a further waiver of the 90-day dormancy condition on its Ukraine frequencies until October 1, 2002. American notes that its code-share arrangement with Swissair is no longer effective, but states that it

seeks the extension so as to provide American the opportunity to secure a replacement code-share partner for its U.S.-Ukraine service.

No answers were filed to American's application.

We have decided to deny American's waiver request. When we selected American over a competing applicant to provide third-country code-share service to the Ukraine, we did so based on public interest findings deriving from the specific features of its proposal to provide service with Swissair. Swissair is no longer operating, and American has terminated its code-share relationship with the carrier. Therefore, even if American subsequently were in a position to resume code-share operations in this market, it would not be resuming the Swissair/American operations we contemplated in selecting it in Order 2000-8-11, and the public interest findings of the Order would no longer be applicable. Any new services that American would seek to operate would accordingly be subject to competitive applications by other carriers. In these circumstances, we are not persuaded that grant of American's waiver request here is in the public interest or consistent with the Department's policies regarding extension of dormancy waivers as set forth in Order 2001-11-15. Should American secure another code-share partner, it would be free at that time to file an application for the third-country code-share authorization and attendant frequencies for services in the U.S.-Ukraine market.

ACCORDINGLY,

1. We deny the application of American Airlines, Inc. in Docket OST-2000-7784 for a waiver of the 90-day dormancy condition on its U.S.-Ukraine third-country code-share frequencies;
2. We will serve this order on American Airlines, Inc., the Ambassador of Ukraine in Washington, DC; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

READ C. VAN DE WATER
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*