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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 the 7th day of July, 1997

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

**Docket
OST-97-2686**

Applications of

**AMERICAN AIRLINES, INC.
DELTA AIR LINES, INC.
NORTHWEST AIRLINES, INC.
UNITED AIR LINES, INC.**

**Dockets OST-97-2330
OST-97-2333
OST-97-2332
OST-97-2331**

for frequency allocations (U.S.-Czech, third-
country code-share service) and related
authorities

Application of

NORTHWEST AIRLINES, INC.

Docket OST-96-1271

for an exemption pursuant to 49 U.S.C. §
40109 (U.S.-Prague, Czech Republic)

Application of

**BRITISH MIDLAND AIRWAYS,
LTD.**

Undocketed

for a statement of authorization under 14 CFR
Part 212 (Code-Sharing with American
Airlines, Inc., London/Heathrow-Prague)

ORDER TO SHOW CAUSE

SUMMARY

By this order, we tentatively select Delta Air Lines, Inc., Northwest Airlines, Inc., and United Air Lines, Inc., to serve Prague, and we tentatively allocate seven weekly frequencies to Delta, and fourteen weekly frequencies each to Northwest and United for these carriers to conduct their service under code-sharing arrangements with third-country carriers.

BACKGROUND

The Air Transport Agreement between the United States and the Czech Republic, entered into force on September 10, 1996, specifically provides for code-sharing operations, including operations under cooperative arrangements between U.S. carriers and third-country carriers. Designated airlines of each Party to the Agreement may operate or hold-out scheduled, combination code-sharing services between points in the United States and points in the Czech Republic over any intermediate point(s).

Under the terms of the Agreement, for the period September 1, 1997, through October 31, 1999, three U.S. carriers may be designated to serve the Czech Republic under cooperative arrangements with third-country carriers. Collectively, the carriers may operate up to 35 weekly frequencies provided that no one carrier operates more than 14 weekly frequencies. After October 31, 1999, there are no limitations on third-country code-sharing operations.

By Notice dated March 26, 1997, we invited interested U.S. carriers to file applications for the three designations to operate U.S.-Czech third-country code-share services that become available September 1, 1997, under the Agreement.

APPLICATIONS

Applications were filed by American Airlines, Inc., Delta, Northwest, and United. Each of the applicants proposes to operate code-share services in the U.S.-Czech market via an intermediate European point with a third-country carrier, all beginning September 1, 1997--American with British Midland Airways via London, Delta with Swiss Air Transport Company Ltd. (Swissair and its subsidiary, Crossair) via Zurich, Northwest with KLM Royal Dutch Airlines via Amsterdam, and United with Lufthansa German Airlines via Frankfurt.¹ Each of the code-share arrangements would provide service between various U.S. points and Prague. The number of frequencies each applicant proposes to operate--no more than 14 weekly frequencies--is within the limits under the Agreement. However, at this time we may designate only three U.S. carriers to provide services with third-country code-share partners and, thus, we must select among the applicants for the available authorizations. Key features of the proposals are set forth in the attached Appendix.

RESPONSIVE PLEADINGS

All of the applicants filed answers and replies.

American states that its proposed code-share service with British Midland will maximize flying by a U.S.-flag carrier between the United States and Prague because every U.S.-Prague passenger on the American/British Midland code-share service will travel the transatlantic segment on American; and that its proposed service will use London, a preferred international gateway, as the European connecting point. American also states that the Delta/Swissair application should be

¹ American and Delta filed applications for certificate authority to serve the U.S.-Czech Republic market. Northwest and United state that they already hold the underlying authority to serve the market.

denied for several reasons: (1) Delta itself already serves Prague with direct flights from New York; thus, selecting Delta would not maximize the expansion of service, price, and quality options to the public; (2) Delta and Swissair so thoroughly dominate the U.S.-Zurich market that it would be poor public policy to grant them more authority at the expense of the American/British Midland proposal; and (3) Delta did not file an underlying code-sharing agreement with Crossair, a Swissair affiliate, that will actually operate one of the Swissair flights in the Zurich-Prague market which would display Delta's DL code, and Crossair holds no authority from the Department to display Delta's code for the carriage of passengers originating or terminating in the United States.

Delta argues that it should be selected for several reasons: (1) it would offer 53 weekly nonstop-to-nonstop connections between Prague and eight U.S. gateways, including Delta's two largest hubs, Atlanta and Cincinnati; (2) it currently serves the U.S.-Prague market with one weekly flight, but it is economically inefficient for it to increase service to Prague with its own aircraft; (3) failure to make an award to Delta in this case will freeze it at a single daily one-stop flight from a single U.S. gateway while the other applicants would be able to operate multiple flights from numerous gateways; and (4) preference should be given to alliance pairings with foreign carriers whose homeland governments have ascribed to open-skies agreements with the U.S., such as Switzerland, the Netherlands and Germany. Also, Delta states that American's arrangement with British Midlands is likely to be transitory since British Airways, not British Midland, is American's chosen alliance partner. In addition, Delta argues that the American/British Midland service proposal is the weakest because British Midland offers less than daily service on both its London-Prague flights, and layovers approaching 10 hours would be required even for some of the American/British Midland flights that would provide "same day" service in the U.S.-Prague market.

Furthermore, Delta argues that the allegations American raised concerning the code-share flights to be operated by Swissair through its subsidiary, Crossair, are wrong. In this regard, Delta states that all of the flights on which Delta proposes to code-share between Zurich and Prague are operated under Swissair's authority--either with Swissair's own aircraft or with Crossair aircraft used by Swissair pursuant to a wet-lease agreement between the two Swiss carriers. It further states that Crossair does not hold out service in its own name and does not hold independent scheduled authority to serve Prague (and it is not required to hold such authority by the civil aviation authorities of Switzerland and the Czech Republic). Finally, Delta states that the Department has explicitly stated that Crossair is part of the Delta/Swissair alliance,² but that Swissair and Crossair will file an exemption application if directed by the Department.

Northwest argues that its service proposal is superior to those of the other applicants in two ways: (1) the Northwest/KLM eastbound service would offer 105 same-day connecting flights via 12 different U.S. gateways while the United/Lufthansa proposal would offer 112 same-day connecting flights but via only 10 different U.S. gateways, the Delta/Swissair proposal would offer 62 same day connecting flights via 8 different U.S. gateways, and the American/British Midland proposal would offer 60 same day connecting flights via only 5 different U.S. gateways;³ and (2) the Northwest/KLM proposal would offer equivalent or shorter layover times at their

² Order 96-6-33 at 5 n. 11.

³ Northwest states that its proposed service with KLM is similarly superior in the westbound direction.

intermediate gateway, Amsterdam, than any of the other alliance applicants. It notes that none of the other applicants has made a serious effort to challenge Northwest's application.

United argues that its proposed service will produce more public benefits than would those of any of the other applicants because the United/Lufthansa code-share service would offer (1) more same day nonstop-to-nonstop connections than any other applicant, (2) more total seats to and from Prague than either Northwest or American, and (3) same day nonstop-to-nonstop connections from more U.S. gateways than either American or Delta.⁴ In addition, United states that after two rounds of pleadings, American has failed to offer a schedule illustrating its connections with British Midland's service in the London-Prague market, leaving the other applicants as well as the Department to speculate on the number and quality of connections available. In these circumstances, United argues that the Department would be warranted in dismissing American's application for failure to prosecute. Finally, United argues that any award to Delta should take into consideration the 7 weekly flights Delta operates in the U.S.-Prague market with its own aircraft and limit any frequency allocation to Delta for code-share services in this proceeding to no more than 7 weekly frequencies.

In response to comments regarding potential American/ British Airways code-share services, American states that the Department should not deny the proposed arrangement between American and British Midland based on speculation by competing applicants about the future course of the American/British Airways alliance.

DECISION

We have tentatively decided to select: (1) Northwest to serve Prague under its code-share arrangement with KLM and to allocate it 14 weekly frequencies for its service; (2) United to serve Prague under its code-share arrangement with Lufthansa and to allocate it 14 weekly frequencies for its service; and (3) Delta to serve Prague under its code-share arrangement with Swissair and to allocate it 7 weekly frequencies for its service.

All four applicants have offered proposals that are similar in certain respects--each proposes to serve Prague with flights via a European intermediate point beginning September 1, 1997. The principal differences in the proposals are the number of U.S. gateways each carrier would serve, either itself or through its third-country code-share partner (American would serve 5, Delta would serve 8, Northwest would serve 12, and United would serve 10), and the quality of connections available at the intermediate point (as discussed below).

We tentatively conclude that the proposals of Northwest, United, and Delta offer the greatest benefits to the traveling public due to the larger number of U.S. cities that would receive daily nonstop-to-nonstop connecting service to and from Prague with convenient connecting times at the intermediate point and should, therefore, be selected for the three available designations for third-country code-share services in the U.S.-Czech Republic market. Specifically, Northwest would provide daily same-day nonstop-to-nonstop connecting service via Amsterdam for twelve U.S. cities both eastbound to Prague and westbound from Prague. United would provide daily

⁴ United states that in the *U.S.-Poland Third-Country Code-Share* case, Order 96-7-37, the Department found that the number of U.S. gateways receiving same day nonstop-to-nonstop connections is the most important criterion to distinguish among applicants for bilateral third-country code-share opportunities.

same-day nonstop-to-nonstop connecting service via Frankfurt for ten U.S. cities both to and from Prague. Delta would provide daily same-day nonstop-to-nonstop connecting service via Zurich for eight U.S. cities both to and from Prague. The majority of the layover times at the intermediate point in both directions under each of the carrier's proposals would be approximately 2 hours or less.⁵ Thus, with the service proposals of Northwest, United, and Delta, numerous U.S. cities would receive convenient daily connecting services to and from Prague.

American, on the other hand, would operate services from the fewest number of U.S. gateways-- five. Furthermore, at least four days per week, service to Prague from American's U.S. gateways would involve long layovers in London eastbound, and would require overnighing in London on return trips. For example, four days per week, a traveler using the New York gateway would have a layover in London of more than 6 hours going to Prague and would have to overnigh in London when returning. Also, four days per week a traveler using the Boston gateway would have a layover in London of almost 10 hours. Returning to Boston from Prague would require a layover in London of more than 7 hours on three days of the week and overnighing in London on the other four days. Connecting services to and from the other three proposed gateways would involve similar delays. Overall, American's proposed service would offer significantly less useable service with the route rights available than the other applicants.⁶

Given these circumstances, we are not persuaded that American's proposed service offers comparable public benefits to those of the other applicants, or otherwise warrants its selection for one of the three available third-country code-share opportunities. American is correct that its selection rather than the selection of Delta would result in operations by four U.S. carriers-- American, Northwest, and United through third-country code-sharing services, and Delta through its current service with its own aircraft. However, taking into consideration the limited connecting service benefits provided under American's proposal, we are not persuaded that the presence of another carrier in the market outweighs the true service benefits available under the proposals of the other carrier applicants in this proceeding.

In terms of frequency allocations, we have tentatively decided to allocate 14 weekly frequencies each to Northwest and United, and to allocate 7 weekly frequencies to Delta. Under the amended agreement, U.S. carriers operating through third-country code-sharing arrangements collectively may operate a total of 35 weekly frequencies, with no one carrier operating more than 14 weekly frequencies. All three of the carriers we are tentatively selecting seek allocation of 14 weekly frequencies. Northwest and United each proposes service from more U.S. gateways than Delta, and each proposes to operate more than daily service from several of the U.S. gateways in their applications to their respective intermediate points. Therefore, we tentatively find that their services would make better use of the 14 weekly frequencies than Delta, which proposes service from fewer U.S. gateways and which proposes no greater than daily service from any of its proposed gateways to the intermediate point. Moreover, Delta already operates daily service with its own aircraft in the New York-Prague market. The allocation of the remaining 7 weekly frequencies to Delta would enable Delta to increase its existing operations in competition with the other two carriers tentatively authorized to serve the market and would facilitate operation of 14

⁵ Flight connecting times for all applicants are based on the *OAG Worldwide Edition*, May 1, 1997.

⁶ Given our tentative decision not to select American for these service-oriented reasons, we need not address arguments regarding open-skies partners or American's proposed alliance with British Airways.

weekly U.S.-Prague services by all three U.S. carriers. Under these circumstances, we tentatively find that the allocation of 14 weekly frequencies each to Northwest and United and 7 to Delta for third-country code-share services will best serve the public interest in this case.

Finally, American has argued that Delta cannot be selected because Crossair, which is an affiliate of Swissair and would be operating some of the flights in the proposed Delta/Swissair code-share operations, does not have underlying economic authority from the Department to conduct those services. In its application, Delta states that if the Department determines that Crossair needs additional underlying economic authority, it will file for the appropriate authority. Given that Delta's code will be displayed on flights operated by Crossair between Zurich and Prague, we tentatively conclude that Crossair needs the underlying economic authority from the Department to conduct those operations. The fact that Crossair's flights operate under the Swissair code is not dispositive given Crossair's operation of the flights. Therefore, we propose here to defer the effectiveness of our authorization of the Delta/Swissair application, to the extent that it involves Crossair operating flights on which Delta's "DL" code would be displayed in the U.S.-Czech Republic market, until an application for the appropriate economic authority by Crossair has been filed with the Department and approved.

FREQUENCY ALLOCATION CONDITIONS

The frequencies available for U.S.-Czech Republic third-country code-share services are extremely valuable and we do not intend that they be wasted. It has become our standard practice to make frequency allocations in limited-entry markets effective for a one-year period, and to subject those frequency allocations to the condition that they will expire automatically and the frequencies will revert back to the Department for reallocation if they are not used for 90 days, once they become available, *i.e.* September 1, 1997. We intend to impose those two conditions on the frequencies allocated in the final order in this case.

ECONOMIC AUTHORITY

In the event our selection of Delta is made final, we would grant Delta a new certificate authorizing its proposed service in the U.S.-Czech Republic market via Zurich under its third-country code-share services with Swissair.⁷ As is our standard practice in limited-entry markets, we would issue Delta a five-year experimental certificate.

Northwest holds exemption authority to serve, *inter alia*, the U.S.-Prague, Czech Republic, market via Amsterdam (Order 95-7-1, July 3, 1995). That authority was due to expire on June 16, 1996; however, Northwest filed a timely application for renewal of its exemption authority in the U.S.-Prague market (Docket OST-96-1271), and the authority has been kept in force beyond its prescribed expiration date pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. § 558(c), as implemented by 14 CFR Part 377, pending action on Northwest's renewal application. United filed an answer stating that it has no objection to Northwest's application as long as renewal of Northwest's exemption authority does not prejudice United's ability to implement its own code-share with Lufthansa in the U.S.-Prague market. In the event our

⁷ The certificate would include route integration authority, as requested by Delta. While Delta requests authority to serve the Czech Republic via a broad number of intermediate points, the certificate would authorize service via Zurich, Switzerland, the intermediate point Delta proposes to serve.

selection of Northwest is made final, we would renew its exemption authority in Docket OST-96-1271 for a two-year period from the date that a final order issues in this case.

United holds authority to operate between the United States and the Czech Republic via Germany pursuant to its Certificates for Routes 57 and 603 and its route integration exemption, effective through May 2, 1999, last issued by Notice of Action Taken, dated June 5, 1997. Lufthansa has been granted a statement of authorization to display, *inter alia*, United's designator code on flights between Frankfurt and Prague. That authority was due to expire on March 22, 1997; however, United and Lufthansa filed a timely joint application for renewal and amendment of the authority (Docket OST-95-369), and the authority has been kept in force beyond its prescribed expiration date pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. § 558(c), as implemented by 14 CFR Part 377, pending action on the joint renewal application. Objections to the joint application have been filed on matters not concerning the Frankfurt-Prague code-share authority. We intend to handle that application separately. In the meantime, United/Lufthansa's authority to engage in code-share services in the Frankfurt-Prague market will remain in effect pending action on their joint renewal application.

ACCORDINGLY,

1. We establish Docket OST-97-2686 for U.S.-Czech Republic third-country code-share services and frequency allocations;
2. We consolidate the applications of American Airlines, Inc., in Docket OST-97-2330; Delta Air Lines, Inc., in Docket OST-97-2333; Northwest Airlines, Inc., in Docket OST-97-2332; and United Air Lines, Inc., in Docket OST-97-2331 into Docket OST-97-2686;
3. We tentatively award new frequencies to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-Czech Republic market as follows: seven (7) weekly frequencies to Delta Air Lines, Inc., for service in the U.S.-Prague market under a code-share arrangement with Swiss Air Transport Company, Ltd. (Swissair and its subsidiary, Crossair); fourteen (14) weekly frequencies to Northwest Airlines, Inc., for service in the U.S.-Prague market under a code-share arrangement with KLM Royal Dutch Airlines; and fourteen (14) weekly frequencies to United Air Lines, Inc., for service in the U.S.-Prague market under a code-share arrangement with Lufthansa German Airlines;
4. We tentatively propose to defer the effectiveness of our authorization of the Delta Air Lines/Swiss Air Transport Company, Ltd. (Swissair and its subsidiary, Crossair) code share service in the U.S.-Czech Republic market, to the extent it involves Crossair operating flights on which Delta's "DL" code would be displayed, until an application for the appropriate economic authority by Crossair has been filed with the Department and approved;
5. We tentatively deny the application of American Airlines, Inc., for one of three designations for U.S.-Czech Republic third-country code-share services;
6. We tentatively deny the application of British Midland Airways, Ltd., for a statement of authorization to code-share with American Airlines, Inc., in the London (Heathrow)-Prague market;

7. We direct all interested persons to show cause why we should not issue an order making final our tentative findings and conclusions;

8. We direct interested persons wishing to comment on our findings and conclusions, or objecting to the issuance of the order described above, to file 5 copies of their comments or objections with the Department, Dockets, TASC/SVC-121.30, Docket OST-97-2686, U.S. Department of Transportation, 400 Seventh Street, S.W., Room PL-401, Washington, D.C. 20590, and to serve a copy on all persons in the last ordering paragraph below, no later than July 25, 1997; answers thereto shall be filed no later than August 1, 1997;⁸

9. 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. If no objections are filed, we will deem all further procedural steps to have been waived, and will proceed to enter a final order subject to Presidential review under 49 U.S.C. § 41307; and

10. We will serve this order on American Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; British Midland Airways, Ltd.; the Ambassador of the Czech Republic in Washington, D.C.; and the Department of State (Office of Aviation Negotiations);

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

⁸ 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 document imaging system.

U.S.-CZECH THIRD-COUNTRY CODE-SHARE APPLICATIONS

3 Carrier Designations and 35 Weekly Frequencies Are Available
(Note: no more than 14 weekly frequencies by any one carrier)

Carrier	Code-Share Partner	Intermediate Point	Czech Point	U.S. Gateways	Weekly Code-Share Frequencies Proposed	Start-up Date	Authority
American	British Midlands	London Heathrow	Prague	5-NYC, BOS, ORD, MIA, LAX	7	9/1/97	Certificate Application
Delta	Swissair/Crossair	Zurich	Prague	8-JFK, EWR, BOS, ORD, LAX, CVG, ATL, IAD,	14 (Delta also currently operates 7 weekly flights in the U.S.-Czech market with its own aircraft)	9/1/97	Certificate Application
Northwest	KLM	Amsterdam	Prague	12-JFK, EWR, BOS, ORD, LAX, IAD, DTW, MSP, MEM, ATL, IAH, SFO	14	9/1/97	Has exemption authority and KLM has Statement of Authorization
United	Lufthansa	Frankfurt	Prague	10- JFK, EWR, BOS, ORD, MIA, ATL, IAD, SFO, LAX, DFW	14	9/1/97	Has certificate authority and Lufthansa has Statement of Authorization