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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 16th day of September, 1997

Applications of

CONTINENTAL AIRLINES, INC.

Docket OST-97-2822

DELTA AIR LINES, INC. ,

OST-97-2803

for designations to provide third-country
code-share services (U.S.-Egypt)

ORDER ON THIRD-COUNTRY CODE-SHARE SERVICES

SUMMARY

By this order we grant the application of Delta Air Lines, Inc., to serve the U.S.-Egypt market through a code-share arrangement with a third-country carrier. We dismiss the application of Continental Airlines, Inc.

BACKGROUND

Under the Air Transport Agreement between the United States and the Government of Egypt, as amended June 24, 1997, three U.S. airlines may serve the U.S.-Egypt market through cooperative service arrangements with third-country airlines.¹ Two U.S. carriers, Northwest Airlines and United Air Lines, have served Egypt under code-share arrangements with third-country carriers and plan to continue their service. Thus, one designation is available under the Agreement for a third U.S. carrier to commence code-share service with a third-country carrier in the U.S.-Egypt market.

By notice dated July 25, 1997, we invited all interested U.S. carriers to file applications to use the available third-country code-share opportunity.

¹ The U.S. and Egyptian delegations stated their intention to recommend to their respective aeronautical authorities that the provisions of the amended agreement be applied provisionally pending an exchange of diplomatic notes formally to enter into force the June 24 accord.

APPLICATIONS

Continental proposes to operate seven weekly flights via Paris with Air France beginning November 1, 1997, assuming resolution of bilateral issues and timely approval of a code-share agreement. Delta proposes to operate six weekly flights via Zurich with Swissair beginning October 26, 1997. Continental would offer service from Newark and Houston to Cairo via Paris; Delta would offer service from eight gateways, including Atlanta, Cincinnati and New York, to Cairo via Zurich.

In support of its application, Continental states that although there is currently no bilateral agreement between the U.S. and France, the two countries have begun negotiations aimed at concluding a comprehensive new bilateral agreement; that Continental plans to begin its U.S.-France-Egypt code-sharing arrangement with Air France when the agreement is concluded and its code-share agreement with Air France is approved; and that Continental has limited transatlantic code-share authority and the public will benefit from a new code-share alliance.

In support of its application, Delta states that the Delta/Swissair code share would represent the third major alliance to serve Egypt; that Delta will be able to offer new access to Egypt from more U.S. cities because of its numerous hubs and extensive on-line service; and that it has the necessary regulatory authority to operate its proposed service.²

RESPONSIVE PLEADINGS

Continental and Delta filed answers to each other's applications and American Airlines filed an answer to Continental's application.

Continental argues that the traveling public will benefit from the enhanced competition that Continental's proposed U.S.-Egypt code-share service would provide, namely, the addition of a new network of U.S.-Egypt on-line service. Continental states that its proposed partnership with Air France as a new entrant alliance will permit it to compete more effectively with the global mega-alliances, including Delta/Swissair.

Delta and American argue that Continental's application should be dismissed since it is not eligible for consideration in the absence of the successful negotiation of a new bilateral aviation agreement with France and approval of the carrier's proposed alliance, and that the Department recently dismissed a similar application because Continental's service could not be operated and there was currently no bilateral aviation agreement or effective reciprocity for such services with France.³ Delta also states that its service proposal is superior to Continental's since it would offer alliance

² Delta states that it holds certificate authority to serve the U.S.-Egypt market in its certificate for Route 616 and that the Department has granted Delta and Swissair a blanket statement of authorization to engage in code-share service, subject to a 30-day advance notice requirement. Delta further states that it has complied with the notice requirement, subject to being selected for the proposed service.

³ Delta and American cite Order 97-2-26 where the Department dismissed certain third-county code-share applications, including Continental's, to serve the U.S.-India market.

competition against the incumbent alliances, serve more U.S. gateways and benefit more behind-gateway passengers throughout the entire United States.

Continental filed a reply, reiterating the service and competitive benefits it believes its alliance will provide the public and arguing that the reciprocity issues raised by American and Delta would be resolved in negotiations. Delta also filed a reply, reiterating its position that Continental's application is not eligible for consideration and questioning the competitive ability of a Continental/Air France alliance with the other global alliances.

DECISION

We have decided to grant Delta's application to provide U.S.-Egypt third-country code-share services. Of the two applications before us, only Delta proposes services that currently can be exercised. The service proposed by Delta is fully consistent with the aviation agreements between the United States and Egypt and between the United States and Switzerland, the homeland of its code-share partner. Moreover, the arrangement between Delta and Swissair has been approved and, thus, their operations can be implemented as proposed.⁴ Furthermore, approval of Delta's application will expand the service options available to the traveling and shipping public, and numerous U.S. cities will receive new or improved service providing them greater access to Egypt.

The services proposed by Continental/Air France, on the other hand, cannot now be operated. There is currently no bilateral aviation agreement with France. Moreover, there is insufficient reciprocity with France to warrant approval of joint operations by Continental and Air France. Indeed, France has followed a consistent policy not to authorize new code-share operations pending conclusion of a new agreement between the two countries. Thus, as Continental is currently not in a position to implement its proposed code-share services, we conclude that it is not eligible at this time for award of the third-country code-share authority at issue. In view of these circumstances, we will dismiss its application without prejudice.⁵

We are not prepared to delay or condition authorization of Delta's service pending resolution of the bilateral and regulatory requirements necessary for consideration of the proposed Continental/Air France code-share service. The U.S.-Egypt third-country code-share opportunity is available immediately and represents a valuable operating right that the United States obtained in exchange for rights for Egyptian carriers. We conclude that the public interest calls for use of those U.S.-carrier rights. As we stated above, Delta is in a position to operate its proposed code-share operations, and plans to begin its service on October 26, 1997. Therefore, we conclude that

⁴ As noted above, Delta holds certificate authority to operate the proposed U.S.-Egypt code-share services, and the Department has granted Delta/Swissair the necessary regulatory authority to operate the proposed code-share services. See Statement of Authorization granted April 30, 1997, granting the carriers a blanket statement of authorization to engage in code-share services, subject to a 30-day advance notice requirement for new markets added to their arrangement. See also July 1, 1997, letter from Delta that provided the above notice regarding U.S.-Zurich-Egypt service, subject to Delta being designated for the third-country code-share service. With the award here, Delta may now hold out the services noted in its July 1 letter.

⁵ See Order 97-2-26 regarding *U.S.-India Third Country Code-Share Services*, Docket OST 96-1970.

authorization of its service at this time is in the public interest and will ensure prompt use of this valuable opportunity.

ACCORDINGLY,

1. We grant the application of Delta Air Lines, Inc., to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-Egypt market under a third-country code-share arrangement with Swissair;
2. The authority granted in ordering paragraph 1, above, will be effective immediately for a period of two years from the date of service of this order;
3. The code-share operations authorized by this order are subject to the following conditions:
 - (a) Delta and Swissair shall comply with the terms and conditions in Order 96-6-33, granting antitrust approval of the Delta/Swissair alliance;
 - (b) the subject foreign air transportation shall be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (*i.e.*, the ticket); and
 - (c) Swissair shall not permit the code of its U.S. carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition;
4. We require Delta Air Lines, Inc., and Swissair to comply with the rules for airline designator code-sharing set forth in 14 CFR § 399.88 of the Department's regulations, and any amendments to the Department's regulations concerning code-share arrangements that may be adopted;
5. We dismiss without prejudice the application of Continental Airlines, Inc., for the necessary regulatory authorities to operate U.S.-Egypt third-country code-share services; and

6. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Swiss Air Transport Company, Ltd.; the Ambassador of Egypt in Washington, D.C.; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (Air Carrier Branch, AFS-200).

By:

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

(SEAL)