DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-138942

DATE: JUN 30 1976

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MATTER OF: Fly America Act - Selecting between flight schedules

DIGEST:

Consistent with the Fly America Guidelines, traveler should use certificated service available at point of origin to furthest practicable interchange point on a usually traveled route. Where origin or interchange point of such route is not serviced by a certificated carrier, noncertificated service should be used to the nearest practicable interchange point to connect with certificated service. Travelers will not be held accountable for nonsubstantial differences in distances between points serviced by certificated carriers. The foregoing principles are not controlling where their application results in use of noncertificated service for actual travel between the United States and another continent.

This decision is rendered for the purpose of providing clarification concerning application of the Comptroller General's "GUIDELINES FOR IMPLEMENTATION OF SECTION 5 OF THE INTERNATIONAL AIR TRANSPORTATION FAIR COMPETITIVE PRACTICES ACT OF 1974" issued March 12, 1976.

The Guidelines require Government-financed commercial foreign air transportation to be performed by certificated air carriers where such service is available. While providing that considerations of convenience, preference and cost, as well as availability of foreign excess currencies, are not relevant to the determination of whether certificated service is available, the Guidelines expressly provide that passenger service by a certificated air carrier will be considered to be "unavailable":

"(a) when the traveler, while en route, has to wait 6 hours or more to transfer to a certificated air carrier to proceed to the intended destination, or

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"(b) when any flight by a certificated air carrier is interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, etc., and no other flight by a certificated air carrier is available during the 6-hour period, or

"(c) when by itself or in combination with other certificated or noncertificated air carriers (if certificated air carriers are "unavailable") it takes 12 or more hours longer from the origin airport to the destination airport to accomplish the agency's mission than would service by a noncertificated air carrier or carriers.

"(d) when the elapsed travel time on a scheduled flight from origin to destination airports by noncertificated air carrier(s) is 3 hours or less, and service by certificated air carrier(s) would involve twice such scheduled traveltime."

Section 5 of Public Law 93-623, the International Air Transportation Fair Competitive Practices Act of 1974, 88 Stat. 2104 (49 U.S.C. 1517), requires the Comptroller General to disallow any expenditures from appropriated funds for payment for personnel or cargo transportation on noncertificated air carriers "in the absence of satisfactory proof of the necessity therefor."

It has been pointed out that while the Guidelines limit an employee's selection of airline schedules, they do not otherwise specifically indicate which, as between several schedules, the employee should use to accomplish the necessary travel. A case in point is that of a traveler requiring transportation between Ankara, Turkey, and Stuttgart, Germany.

For the purpose of discussion it will be assumed that there are no constraints upon the employee's departure or arrival time and that he is on notice that the travel can be accomplished by any of the four schedules set forth below:

SCHEDULE I

Monday/Tuesday/Thursday/Saturday/Sunday

LV:	Ankara	0830	- Lufthansa
AR:	Frankfurt	1210	
LV:	"	1325	- Lufthansa
AR:	Stuttgart	1410	

SCHEDULE II

Wednesday/Friday/Saturday

LV:	Ankara	0800	- Pan Am
AR:	Rome	1100	
LV:	"	1650	- Alitalia
AR:	Stuttgart	1940	

SCHEDULE III

Wednesday/Friday/Saturday

LV:	Ankara	0800	- Pan Am
AR:	Istanbul	0855	
LV:	"	1430	- Pan Am
AR:	Frankfurt	1620	
LV:	"	1650 or 2120	- Lufthansa
AR:	Stuttgart	1730 or 2200	

SCHEDULE IV

Daily - except Saturday

LV:	Ankara	1130	- Turkish flight
AR:	Istanbul	1220	
LV:	"	1430	- Pan Am
AR:	Frankfurt	1620	
LV:	"	1650 or 2120	- Lufthansa
AR:	Stuttgart	1730 or 2200	

Under the Guidelines, the traveler should first ascertain whether certificated service is available in Ankara. Where such service is available at point of origin, the traveler's selection is properly limited to those schedules by way of a usually traveled route originating with a certificated air carrier. Thus, in the example under consideration, the employee's choice is limited to Schedules II and III. In the absence of appropriate regulations in the nature of the Department of State's "Uniform State/AID/USIA Foreign Service Travel Regulations, 6 FAM 134, selection between two or more schedules should be made consistent with the basic principles and policy considerations set forth below.

The purpose behind section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 is to counterbalance the advantages many foreign airlines enjoy by virtue of financial involvement and preferential treatment by their respective foreign governments. The clear intent of Congress was that United States Government-financed foreign air transportation be accomplished by certificated carriers to the extent possible. Thus, where a traveler is faced with a choice between several different schedules, all of which involve the use of certificated air carriers, the intent of Congress is best carried out by his selection of the schedule which makes the greatest use of certificated service.

In many cases the proper selection will be obvious. In those cases, where a traveler selects a schedule that utilizes certificated service for substantially less of the travel than an available alternative scheduling would permit, his use of noncertificated service will be considered excessive and hence not necessary to the extent it exceeds the lesser use he might have made of noncertificated service.

We do not believe, however, that a traveler can reasonably be expected to consult a mileage guide or otherwise precisely determine the distances between origin, destination and various interchange points in selecting between flight schedules. For this reason a traveler will not be considered to have improperly used noncertificated service where the geography of the alternative schedules is not such as to put him on notice of substantial differences in distances between points serviced by certificated air carriers.

In the example at hand, certificated service is available under Schedule III from Ankara via Istanbul to Frankfurt, while such service is available under Schedule II between Ankara and Rome. The conscientous traveler should, of course, select Schedule III, thereby making use of certificated air service to the furthest practicable interchange point on a usually traveled route. However, the distances between the cities involved would appear different to travelers depending upon the particular map consulted, so that it is unreasonable to assume that the average traveler would be apprised of the fact that the distance from Ankara to Frankfurt is substantially greater than the distance between Ankara and Rome. In the circumstances and since both schedules involve transportation over usually traveled routes, the traveler could appropriately proceed by either Schedule II or Schedule III.

We recognize that neither the Guidelines nor the above-stated principles give clear guidance to the traveler whose airport at point of origin is not serviced by a certificated carrier. In such cases, the general policy considerations expressed above would nonetheless be applicable and in order to fully carry out the intent of Section 5, the traveler should proceed by noncertificated carrier from point of origin to the nearest practicable interchange point on a usually traveled route to connect with certificated service. Assuming the traveler's selection were limited to Schedules I and IV, he would thus be obliged to select Schedule IV which clearly involves substantially more travel by certificated carrier than does Schedule I. Similar considerations apply where use of a noncertificated carrier is unavoidable en route. Noncertificated service should be used only to the nearest practicable interchange point on a usually traveled route to connect with service by a certificated air carrier.

There is one situation in which the nuances of the above principles should not be controlling. Where the use of certificated carrier from point of origin to the furthest practicable interchange point, or the use of noncertificated service to the nearest practicable interchange point to connect with certificated service, leaves the traveler at a location from which he has no choice but to use a noncertificated

carrier for actual transportation between the United States and another continent the traveler should otherwise route his travel to assure that such intercontinental transportation is furnished by certificated carrier to the extent such service is available under the Guidelines.

Payments for excessive use of noncertificated air service will be disallowed under the March 12 Guidelines as implemented by the foregoing principles.

R. F. Keller

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of the United States