



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

Order 96-6-38

Issued by the Department of Transportation
on the 18th day of June, 1996

Served: June 24, 1996

Applications of

**Alaska Airlines, Inc.
American Airlines, Inc.**

**American Airlines, Inc., Executive Airlines, Inc.,
Flagship Airlines, Inc., Simmons Airlines, Inc.,
Wings West, Inc. d/b/a American Eagle and
Canadian Airlines International Ltd., Ontario
Express Ltd., Time Air, Inc., Inter-Canadien
(1991) Inc. d/b/a Canadian Regional
Continental Airlines, Inc.**

**DHL Airways, Inc.
Laker Airways, Inc.
Federal Express Corporation
United Air Lines, Inc.
United Air Lines, Inc. and Lufthansa German
Airlines
World Airways, Inc.**

for exemptions or authorities under 49 U.S.C. section
40109 and the orders and regulations of the Department
of Transportation

**Dockets OST-96-1305
48354
OST-96-1073
OST-95-792**

**OST-96-1080
OST-96-1164
OST-96-1368
OST-96-1240 (47804)
OST-96-1225
OST-96-1186
OST-96-1058
OST-96-1285**

**OST-96-1137
OST-96-1254**

ORDER

The captioned U.S. air carriers have applied for various forms of authority or relief from Title 49 of the U.S. Code or regulations or orders of the Department in order to perform the air transportation activities shown in the attached Notices of Action Taken. Except as noted, no answers were filed to these requests. Because of the imminence of these operations, we approved them by telephone, subject to adherence, by each applicant, to the conditions set forth in its certificate(s) of public convenience and necessity, and/or conditions attached.

We carefully considered the information set forth in each application described in the attached Notices of Action Taken, and we found that each of the proposed operations was consistent with the public interest and was consistent with an applicable bilateral aviation agreement and/or the aviation relationship between the United States and the foreign country involved, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

Under authority assigned by the Department in its Regulations, 14 CFR Part 385, we found that for each operation (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption or authority was consistent with the public interest; and (3) grant of this authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.¹

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced U.S. air carriers (1) exemptions from the provisions of Section 41101 and where necessary 41504 or as noted in the attached notices, other sections of Title 49 U.S.C.; or (2) relief or authorizations as provided for under regulations or orders of the Department, to the applicants to perform the operations described in the attached Notices of Action Taken;
2. In the conduct of the service, each applicant was to adhere to the conditions set forth in the Appendix, and to any other conditions as noted in the attached Notices of Action Taken;
3. To the extent not granted, or explicitly deferred as noted in the attached Notices of Action Taken, these applications are denied; and
4. We may amend, modify, or revoke this order at any time without hearing.

¹ On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found that each U.S. air carrier applicant for an operating exemption is qualified to provide the services authorized.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within ten (10) days after the date of service of this order. The filing of a petition for review of a particular action shall affect this order only as it concerns that action.

These actions were effective when taken, and the filing of a petition for review will not alter their effectiveness.

By:

PAUL L. GRETCH
Director
Office of International Aviation

(SEAL)

Appendix

U.S. Carrier Standard Exemption Conditions

In the conduct of the operations authorized by the attached order, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with the requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted or confirmed by the attached order shall be effective only during the period when the holder is in compliance with the conditions imposed above.

RENEWAL

NOTICE OF ACTION TAKEN May 22, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of ALASKA AIRLINES, INC., filed 4/24/96 in Docket OST-96-1305
for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between the terminal point Phoenix, Arizona, and the terminal point San Jose del Cabo, Mexico. Alaska also requests a waiver of the 60-day advance filing requirement under Part 377 of the Department's regulations.

Applicant rep: Marshall S. Sinick (202)626-6651 DOT Analyst: Linda Lundell (202)366-2336

DISPOSITION

XX **Granted In Part (see remarks)**

XX **Dismissed Waiver Request**

The above action was effective when taken: May 22, 1996, through May 22, 1997, until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)

XX **Authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX** **Holder's certificate of public convenience and necessity.**

XX **Standard Exemption Conditions attached**

Special Conditions/Remarks: **The U.S.-Mexico authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. We dismissed Alaska's request for waiver of the 60-day advance filing requirements as we acted on the carrier's renewal application before expiration of the existing authority - June 6, 1996.**

NEW

NOTICE OF ACTION TAKEN

April 2, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applications of AMERICAN AIRLINES, INC. filed 6/21/94 in Docket 48354

XX Amend exemption granted under 49 U.S.C. 40109 to permit American to engage in scheduled foreign air transportation of persons, property, and mail between the coterminal points New York, New York, and Miami, Florida, on the one hand, and the coterminal points Johannesburg and Cape Town, South Africa, on the other hand. American's existing exemption grants authority only between New York and Johannesburg. See Order 95-2-27. American plans to serve these markets pursuant to a code-share arrangement with South African Airways(SAA) under which SAA will operate the service between the United States and South Africa.

XX Statement of Authorization under 14 CFR 207 of the Department's Regulations to enable American to place the designator code of SAA on flights operated by American in certain domestic markets (New York-Los Angeles, New York-Miami and Miami-Los Angeles) in conjunction with SAA's transatlantic services between the United States and South Africa.

Applicant reps: Carl B. Nelson (202) 496-5647 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX Granted (see remarks)

The above action was effective when taken: April 2, 1996 thru April 2, 1998.

XX Under assigned authority (14 CFR 385) by:

*Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of this
action.)*

XX Authority granted is consistent with the provisions of an aviation agreement initialed in Washington by representatives of the United States and South Africa on March 29, 1996.

*Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX American's certificate of public convenience and necessity
XX Standard Exemption Conditions (attached)*

(See Reverse Side)

Special Conditions/Remarks:

Continental, Northwest and United filed answers opposing the amended exemption request. Northwest and United stated that the Department should deny the application unless other U.S. carriers were permitted to serve the South African market through code-share arrangements with third country carriers. Continental stated that the Department should approve its then pending code-share application with an Italian carrier or else defer American's application. (The Department subsequently approved Continental's application.) American, USAfrica Airways, United and SAA filed various answers and replies. Northwest and United also opposed the statement of authorization; SAA filed in support.

On March 29, 1996, the United States and South Africa initialed in Washington an agreement for air services. That agreement specifically provides for code-sharing operations in the U.S.-South Africa market. The services proposed by American and SAA are fully consistent with those provisions of the agreement. In addition, the agreement provides for code-sharing services in the U.S.-South Africa market via intermediate points using third-country airlines on a phased-in basis, thereby addressing the concerns raised by United and Northwest. In these circumstances, we found that approval of American's applications was consistent with the public interest.

The code-sharing operations authorized herein must comply with 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 and are further expressly conditioned upon the requirement that the foreign air transportation in question 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 the contract of carriage with the passenger (*i.e.* ticket).

RENEWAL

NOTICE OF ACTION TAKEN

APRIL 18, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Joint Application of American Airlines, Inc., Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc., Wings West Airlines, Inc. (d/b/a American Eagle) and Canadian Airlines International Ltd., Ontario Express Ltd., Time Air Inc., Inter-Canadien (1991) Inc. (d/b/a Canadian Regional) filed 3/18/96 in Docket OST-95-792 for:

XX *Statement of Authorization under 14 CFR Parts 207 and 212 to offer code-sharing services (U.S.-Canada):*

By Order 95-5-23 the Department granted the joint applicants' statements of authorization to provide code-share services in various named transborder markets as well as behind U.S. gateways to interior U.S. points (176 cities) on flights operated by American/American Eagle, and behind Canadian gateways to interior Canadian points (87 cities) on flights operated by Canadian International and its affiliates. Those authorizations are subject to our standard code-share conditions as well as specific conditions imposed on U.S.-Canada code-share operations. The joint applicants seek renewal of that authority. In addition, the joint applicants seek amendment of the statements of authorization in order to permit the "AA" designator code to be displayed on all transborder flights operated by Canadian et al. and the "CP" code to be displayed on all transborder flights operated by American et al. consistent with the U.S.-Canada Air Transport Agreement, without the need to seek further authorization on a route-by-route basis.*

*Applicant rep: Carl B. Nelson (202) 496-5647 (American et al.); David B. Ortman (202) 488-7429 (Canadian et al.)
DOT Analyst: Linda Senese (202)366-2367*

DISPOSITION

XX **Granted (subject to conditions, see below)**

XX **Authority granted is consistent with the 1995 U.S.-Canada Air Transport Agreement.**

The above action was effective when taken: April 17, 1996, thru April 17, 1997

(See Reverse Side)

*American and American Eagle did not seek renewal of the underlying exemption authority granted by Order 95-5-23 in order to conduct the proposed code-share services. By Order 95-6-26 American was issued a certificate for Route 658 and American Eagle was issued a certificate for Route 661, authorizing service between any point in the United States and any point in Canada, subject to the phase-in provisions for Vancouver, Toronto and Montreal services. As a result, the exemption authority is no longer necessary.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
*(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of this
action.)*

*Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX** Holder's certificate of public convenience and necessity.*

XX Standard exemption conditions (attached).

Special Conditions/Remarks:

Code-sharing operations are subject to the same conditions set forth in Order 95-5-23 ordering paragraphs 4 through 6. The authority granted above is subject to the frequency limitations specified in the 1995 U.S.-Canada Air Transport Agreement, and to the condition that, upon request, the parties will provide to the Director, Office of International Aviation, a full description of the services operated under the authorities granted to ensure compliance with the Agreement. In addition, we are modifying the requirement found in ordering paragraph 6 of Order 95-5-23 so that Canadian International's notification of the Canadian Government's allocations of connecting service frequencies under Annex V, Section 4 of the 1995 U.S.-Canada Air Transport Agreement should be filed in Docket OST 95-792 (rather than in the original grant docket, Docket 50209) and should be served on all parties. This change is necessary due to the new docketing system of the Department.

RENEWAL

NOTICE OF ACTION TAKEN

April 18, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of AMERICAN AIRLINES, INC. filed 2/13/96 in Docket OST-96-1073

XX For Two-Year Renewal of Frequency Allocation

American requests renewal of its allocation of one weekly roundtrip frequency for operations in the Miami-Lima market.

Applicant rep: Carl B. Nelson, Jr. (202) 496-5647 DOT Analyst: Linda Lundell (202) 366-2336

DISPOSITION

XX **Granted**

The above action was effective when taken: April 18, 1996, thru April 18, 1998, or until 90 days after final Department action in the *U.S.-Lima Combination Service Proceeding* (Miami-Lima portion) (Docket OST-95-370), whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of this
action.)

XX **Authority granted is consistent with the aviation agreement between the United States and Peru.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX **Holder's certificate of public convenience and necessity.**

XX **Standard Exemption Conditions attached**

Conditions/Remarks: American's allocation for Miami-Lima service had been kept in force beyond its expiration date (April 13, 1996), under 5 U.S.C. section 558(c) of the Administrative Procedures Act, as implemented in Part 377 of our regulations, pending action on American's renewal application.

NEW

NOTICE OF ACTION TAKEN

May 16, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of **CONTINENTAL AIRLINES, INC.**, filed: **February 16, 1996**, Docketed (**OST-96-1080**) and Undocketed for:

XX Exemption under 49 U.S.C. 40109 **XX** Statement of Authorization **XX** Frequency Allocation

Requested Authority: (1) A statement of authorization under Part 207 permitting Continental to display the "GU" designator code of Aviateca, the "CM" designator code of Compania Panamena de Aviacion, S.A. (Copa), the "LR" designator code of Lineas Aereas Costarricenses, S.A. (Lacsa), the "6Y" designator code of Nicaraguense de Aviacion, S.A. (Nica), and the "TA" designator code of Taca International Airlines, S.A. (Taca), on various flights operated by Continental as shown in Appendix A to this Notice, and (2) an exemption from 49 U.S.C. Section 41101 permitting Continental to (a) engage in scheduled foreign air transportation in the Houston-Merida and Houston-Villahermosa markets on a code-share basis with Aviateca; (b) combine Continental's authority to serve Merida, Villahermosa, Veracruz, and Huatulco with Continental's authority to serve Guatemala City in order to provide services on a Houston- Merida/Villahermosa/Veracruz/ Huatulco-Guatemala City routing under a code-share arrangement with Aviateca; and (c) combine Continental's authority to serve Panama City with its Santo Domingo authority in order to provide services on a U.S.-Panama City-Santo Domingo routing under a code-share arrangement with Copa. In addition, Continental requests an allocation of 3.5 additional U.S.-Ecuador frequencies for Houston-Panama-Ecuador code-share services with Copa. Continental requests that the requested authority be granted for a two-year period.

Applicant rep: **R. Bruce Keiner, Jr. (202)624-2500** DOT Analyst: **Linda Lundell (202)366-2336**

DISPOSITION

- XX** **Granted Continental a Statement of Authorization with respect to code-share services with Taca and Lacsa on all routes where they are listed in Appendix A. We also granted to Continental a Statement of Authorization with respect to code-share services with Aviateca in the Dallas/Ft. Worth-Houston market.**
- XX** **Dismissed request for longer-term authority.**
- XX** **Balance Deferred (See Below)**

The above action was effective when taken: **May 16, 1996** through **May 16, 1997** or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by: **Paul L. Gretch, Director**
 Office of International Aviation
 (Petitions for review may be filed from now until
 10 days after the confirming order/letter issues.
 Filing of a petition shall not stay the effectiveness of this

action.)

XX **The authority granted is consistent with the overall state of aviation relations between the United States and the foreign countries involved.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity. XX Standard Exemption Conditions attached
(See Reverse Side)

Responsive Pleadings: American Airlines and United Air Lines filed answers to the application. Continental and United each filed a consolidated reply. 1/ American's answer goes only to that part of Continental's application that involves placing Nica's code on Continental's flights. Since we are deferring on that portion of Continental's application, we need not address here the matters raised by American.

United states that it does not oppose any of the applications with respect to the contemplated codeshare, but merely urges that the authority be appropriately conditioned to assure that other U.S. carriers have access to these markets on a reciprocal basis pursuant to code-share arrangements with carriers of their choice. Regarding the Continental-Copa code-share, United notes that it was not able to obtain approval from the Dominican Republic to implement a similar codeshare with ALM, and it requests that the Department approach the Dominican Republic and urge the approval of both United's and Continental's code-share services. Further, United opposes Continental's request for 3.5 additional Ecuador frequencies for use of a third-country carrier (Copa), stating that U.S. carrier frequencies should not be used for services operated by foreign carriers.

Continental argues that there is no basis for the conditions that United requests, and further states that the Department should immediately grant the requested code-share authority it seeks and defer on Continental's request for an additional 3.5 frequencies for Continental/Copa code-share operations until it is clear what Ecuador's policy will be with regard to code-share operations.

Remarks: In past cases involving requests for this type of code-share authority, we have deferred consideration until receipt of the requisite assurances of reciprocity from the concerned foreign governments. Where such assurances have been provided, and where no other factors (public interest, regulatory policy, safety oversight issues, etc.), have prevented our doing so, we have proceeded to grant the requests, but subject to conditions designed to ensure that reciprocity would be forthcoming. We followed that same course here.

Thus, we granted authority for Continental to engage in code-share services with Taca and Lacsca, and authority for Continental to engage in code-share services with Aviateca in the Dallas/Ft. Worth -Houston market, subject to the special conditions listed below. We made the authority effective for one year, and dismissed, without prejudice, Continental's request for longer-term authority. We deferred on Continental's requests as to the remaining proposed code-share services with Aviateca, and to the proposed code-share services with Nica and Copa, pending further review of the issues raised by the application. We also deferred on Continental's request for allocation of 3.5 additional weekly frequencies to provide the proposed code-share services to Ecuador in conjunction with Copa.

As to those authorities granted, we found that our action is in the public interest. The authority granted is supported by reciprocity on the part of the foreign carriers' homelands. In this connection, however, we emphasize that we granted this authority in full reliance on our expectation that the Governments of Guatemala, El Salvador, and Costa Rica will approve U.S. carrier requests to implement code-share operations to those countries involving third-country carriers. (We note that we have contacted the Governments of Guatemala, El Salvador, and Costa Rica regarding their code-share policies and received responses supporting the conclusion that they would approve code-share requests regarding U.S. and third-country carriers.) Should such approval not be forthcoming, we reserve the right to review and to amend, modify, or revoke these authorities at any time and without hearing. Aviateca, Taca, and Lacsca should have no expectations that the code-share authorities granted here would continue in such circumstances.

Finally, the code-sharing operations authorized here must comply with 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. They are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservations 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).

1/ United accompanied its reply with a motion for leave to file an otherwise unauthorized document. We orally granted the motion.

APPENDIX A

Code-sharing on Continental Flights

<u>Flight</u>	<u>Code-Share Partner</u>
Panama City-Guayaquil	Copa
Panama City-Quito	Copa
Newark-Miami	Copa Aviateca Laesa * Taca * Nica
Dallas/Ft. Worth-Houston	Aviateca * Taca *
Panama City-Houston/Los Angeles	Copa
Houston-Panama City	Copa
Houston-San Pedro Sula	Taca *

* Granted orally.

NEW

NOTICE OF ACTION TAKEN **May 22, 1996**

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of CONTINENTAL AIRLINES, INC., filed 5/13/96 in Docket OST-96-1368
for:

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between (1) the terminal point Houston, Texas, and the terminal point Mazatlan, Mexico; and (2) the terminal point Houston, Texas, and the terminal point Veracruz, Mexico. Continental requested that the authority be granted immediately so Continental could begin promotion and sales activities through listings in CRS systems.

Applicant rep: R. Bruce Keiner (202)624-2500 DOT Analyst: Linda Lundell (202)366-2336

DISPOSITION

XX **Granted (see remarks)**

The above action was effective when taken: May 22, 1996, through May 22, 1998, until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of this
action.)

XX **Authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX** **Holder's certificate of public convenience and necessity.**

XX **Standard Exemption Conditions attached**

Special Conditions/Remarks: **We acted on the carrier's request before expiration of the answer period with the consent of all parties. The U.S.-Mexico authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. Consistent with our standard practice, the dormancy notice period will begin December 12, 1996, Continental's proposed start-up date for these services.**

NOTICE OF ACTION TAKEN

April 16, 1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of CONTINENTAL AIRLINES, INC. filed 3/18/96 in Docket OST-96-1164 for:

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail in the Newark-Dublin, Ireland; Newark-Dakar, Senegal; Newark-Johannesburg, South Africa; and Newark-Belfast, United Kingdom markets. Continental also requests the right to combine its Newark-Dublin/Dakar/Johannesburg/Belfast service with service at other points Continental is authorized to serve by certificates or exemptions, including Continental's existing authority to serve Shannon and Tel Aviv (included on Continental's certificate for Route 29-F). Continental states that it plans to use the requested authority to code-share on Newark-Dublin/Shannon/Belfast/Dakar/Johannesburg/Tel Aviv flights operated by World Airways beginning June 1996. Continental states further that it recognizes that World does not yet have Dakar authority, and Continental's "application for Dakar is contingent on World's securing such authority."

Applicant rep: R. Bruce Keiner, Jr. (202)624-2500 DOT Analyst: Linda Lundell (202)366-2336

DISPOSITION

XX **Granted In Part** (see remarks) XX **Dismissed Request for Longer-term Authority**

XX **Deferred (Dakar)**

The above action was effective when taken: April 16, 1996, through April 16, 1997

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of this action.)

XX **Authority granted is consistent with the aviation agreements between the United States and Ireland, and the United States and the United Kingdom, and the aviation agreement between the United States and South Africa initialed in Washington, D.C., on March 29, 1996.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX **Holder's certificate of public convenience and necessity.**

XX **Standard Exemption Conditions (attached)**

(See Reverse Side)

Remarks: We dismissed, without prejudice, Continental's request for longer-term authority in this application.

We defer on Continental's request for authority to serve Dakar, Senegal.

Special Conditions: Code-sharing operations must comply with 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 and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservations 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).

The route integration authority granted is subject to the provisions of the bilateral aviation agreements between the United States and the foreign countries involved.

Responsive Pleadings: South Africa Airways (SAA), World Airways, and Delta Air Lines filed answers to Continental's application. American and United each filed a reply to Delta's answer. Continental filed a consolidated reply.¹ World Airways filed in support of Continental's application. SAA commented on the application to the extent Continental seeks authority to serve South Africa. SAA stated that it would not object to the commercial opportunities such as those desired by Continental and World, but believes that there is a lack of reciprocity which precludes approval of Continental's application by the Government of South Africa because the Department has not approved SAA's application to expand its code-share services with American. On April 2, 1996, consistent with the provisions of the new aviation agreement between the United States and South Africa initialed March 29, the Department granted American and SAA the necessary authorities to expand their code-share operations between the United States and South Africa, addressing SAA's concerns.

Delta commented on the application to the extent Continental seeks authority to serve Ireland. Delta stated that the public interest clearly warrants grant of Continental's application, as well as Delta's pending application for U.S.-Ireland code-share services with Aer Lingus. American filed a response to Delta's answer, stating that American had no objection to Continental's application, but that it opposed Delta's suggestion that the Continental/World arrangement is analogous to the Delta/Aer Lingus proposal. United also commented, stating that it continues to seek authority from the Irish Government to code share to Dublin on British Midland's services between London Heathrow and Dublin. United expressed concern that the Irish government may seek to use the Continental/World code share as leverage to gain approval for the pending Delta/Aer Lingus code share without, at the same time, agreeing to approve United's code share with British Midland. By Order 96-4-19, the Department granted the Delta/Aer Lingus joint application for code-share services, addressing the issues raised by Delta and United.

¹ American, United and Continental each accompanied its respective response with a motion for leave to file an otherwise unauthorized document. We granted all of the motions.

RENEWAL

NOTICE OF ACTION TAKEN April 10,

1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of DHL AIRWAYS, INC. filed 10/14/92 in Docket OST-96-1240 (47804) for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of property and mail between the coterminal points Cincinnati, Ohio, and Houston, Texas, on the one hand, and the terminal point Mexico City, Mexico, on the other hand. DHL requested that the authority be renewed for a period of one year.

On March 29, 1996, DHL filed a motion for leave to file and expedited treatment of its application. In its motion, DHL requests that the authority be renewed for a period of two years. We received no answers to this motion.

Applicant rep: R. Tenney Johnson (202)663-9030 DOT Analyst: Linda Lundell (202)366-2336

DISPOSITION

XX **Granted (see remarks)**

The above action was effective when taken: April 10, 1996, through April 10, 1998, or until 90 days after final Department action on DHL's corresponding certificate application in Docket 47803, whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by: **Paul L. Gretch, Director**
Office of International Aviation
(Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)

XX **Authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX **Holder's certificate of public convenience and necessity.**

XX **Standard Exemption Conditions attached**

Special Conditions/Remarks: **The City of Houston and The Greater Houston Partnership filed in support of DHL's application. Federal Express Corporation filed an answer to DHL's application raising concerns regarding DHL's citizenship. DHL filed a reply. The Department has specifically considered the DHL citizenship issue. In the U.K. Fifth-Freedom All-Cargo Proceeding (Docket 50304), the**

Department said that it has reviewed DHL's citizenship and has determined that DHL continues to be a citizen of the United States (Order 95-8-34, at 2, footnote 2).

The U.S.-Mexico authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2.

NEW

NOTICE OF ACTION TAKEN **May 2, 1996**

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of LAKER AIRWAYS INC. filed 4/2/96 in Docket OST-96-1225

XX Exemption for two years under 49 U.S.C. section 40109 to perform the following services:

Scheduled foreign air transportation of persons, property, and mail between (1) Ft. Lauderdale, Florida, and London (Gatwick), England; (2) Miami, Florida, and London (Gatwick), England; and (3) Ft. Lauderdale, Miami, and Orlando, on the one hand, and Manchester and Glasgow (Prestwick), on the other hand.

Applicant rep: Robert M. Beckman (202) 828-4100 DOT Analyst: Linda Lundell (202) 366-2336

DISPOSITION

XX **Granted In Part (See Remarks)** XX **Dismissed Request for Longer-Term Authority**

XX **Deferred on Ft. Lauderdale-London Portion**

The above action was effective when taken: May 1, 1996, thru May 1, 1997, or until 90 days after final Department action on Laker's corresponding certificate application filed in Docket OST-96-1224, whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)

XX **Authority granted is consistent with the aviation agreement between the United States and the United Kingdom, and Memorandum of Understanding of June 5, 1995.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX **Holder's certificate of public convenience and necessity.**

XX **Standard Exemption Conditions (attached)**

(See Reverse Side)

Remarks: The Metropolitan Nashville Airport Authority (Nashville) and the City and County of Denver (Denver) each filed an answer to Laker's application.¹ Laker filed a reply to Nashville's answer. These pleadings all go to the matter of the need to switch an existing dormant U.S. gateway in order to authorize Laker's proposed London (Gatwick) services. This affects only Laker's request to serve the Ft. Lauderdale-London market. (Although the civic parties also mentioned the proposed Miami-London (Gatwick) services, Miami is an existing U.S. gateway. Thus, a switch of U.S. gateway authority is not required in order to authorize Laker's proposed Miami-London services.) We deferred action on the Ft. Lauderdale-London portion of Laker's request. We intend to handle the Ft. Lauderdale portion of the application in a separate order, and we will address the issues raised by these pleadings there.

With respect to the approved Miami-London services, we note that Laker has proposed to operate at a level of only two roundtrip frequencies a week. However, Laker has characterized this as an "initial" service proposal, saying that it expects to increase frequencies as the market develops. In this regard, we have put Laker on notice that should it not increase its frequency level, and should another U.S. carrier seek to serve Miami with a superior level of service, we reserve the right to revisit the issue and to reconsider our award to Laker.

Fuel: Laker has forecast that the proposed operations will consume 18,699,909.55 gallons of fuel annually. We found that the additional service to be provided under this authority and the resulting public benefits outweigh any adverse effects that may be caused by the increased fuel consumption.

Fitness Issues: By Order 96-1-10, the Department issued to Laker a certificate of public convenience and necessity authorizing scheduled interstate and overseas air transportation of persons, property, and mail, including worldwide charter authority. Pursuant to that authority, Laker currently operates charters in the Orlando/Ft. Lauderdale-London/Manchester/Prestwick markets. Laker supplemented its application to provide additional fitness information with respect to its proposed scheduled air services. Based on our review of this information, we found that Laker is qualified to provide the foreign scheduled air services proposed.

Duration: Laker requested a two-year award. We determined, consistent with our policy in cases such as this, to award the authority for one year and to dismiss the request for a second year without prejudice.

¹ Denver accompanied its answer with a motion for leave to file late. We granted the motion.

NEW

NOTICE OF ACTION TAKEN April 24,

1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of FEDERAL EXPRESS CORPORATION filed 3/26/96 in Docket OST-96-1186

XX For exemption under 49 U.S.C. 40109 to engage in scheduled foreign air transportation of property and mail between the coterminal points Miami, Florida, and Memphis, Tennessee, on the one hand, and Panama City, Panama, and Bogota, Colombia, on the other, and authority to integrate these services with its other authorized services between the United States and Central and South America. Federal Express initially plans to operate on a Memphis-Miami-Caracas-Bogota-Panama City-Memphis routing.

Applicant rep: Nathaniel Breed, Jr. (202) 663-8078 DOT Analyst: Terri Bingham (202) 366-2390

DISPOSITION

XX **Granted**

The above action was effective when taken: April 23, 1996, thru April 23, 1998, or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until 10 days after the confirming order/letter issues. Filing of a petition shall not stay the effectiveness of this action.)

XX Authority granted is consistent with the aviation agreements between the United States and Colombia and the United States and Panama.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX Holder's certificate of public convenience and necessity.
XX Standard Exemption Conditions (attached)

(See Reverse Side)

Conditions/Remarks: Route integration authority granted is subject to the provisions of the bilateral aviation agreements between the United States and the foreign countries involved.

DHL Aero Expreso, S.A., Fine Airlines and American International Airways (AIA) filed answers to Federal Express' application. Federal Express filed a consolidated reply. DHL Aero Expreso, a new Panamanian carrier, objects to the application unless its own application to provide Panama-Miami service in Docket OST-96-1034 is also granted. It takes no position with respect to Federal Express' application to serve Colombia. Fine and AIA do not oppose the application, but urge the Department not to act on the applications prior to the April bilateral aviation consultations between the United States and Colombia. Federal Express replied that none of the answers provided a sound basis for denial or deferred action on its application.

We concluded that the public interest warranted approval of Federal Express' application. The authority to serve Panama and Colombia is clearly provided for in our aviation agreements with Colombia and Panama. The fact that DHL Aero Expreso has an application pending for foreign air carrier exemption authority to serve Panama is not a basis for withholding action on Federal Express' application, since the applications of the two carriers are not mutually exclusive. DHL Aero's application is under review and will be acted on in due course. Neither Fine nor AIA objected to Federal Express' application. Given the bilaterally authorized nature of the services at issue, we were not persuaded that the public interest was best served by deferral.

RENEWAL

NOTICE OF ACTION TAKEN

April 18,

1996

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of UNITED AIR LINES, INC. filed 2/7/96 in Docket OST-96-1058

XX Exemption for two years under 49 U.S.C. section 40109 to perform the following services:

Scheduled foreign air transportation of persons, property, and mail between Miami, Florida, and Lima, Peru, and allocation of seven weekly frequencies to provide this service.

Applicant rep: Joel S. Burton (202) 637-9130 DOT Analyst: Linda Lundell (202) 366-2336

DISPOSITION

XX **Granted**

The above action was effective when taken: April 18, 1996, thru April 18, 1998, or until 90 days after final Department action in the *U.S.-Lima Combination Service Proceeding* (Miami-Lima portion) (Docket OST-95-370), whichever occurs earlier.

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of this
action.)

XX **Authority granted is consistent with the aviation agreement between the United States and Peru.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: XX **Holder's certificate of public convenience and necessity.**

XX Standard Exemption Conditions attached

Conditions/Remarks: United's authority to provide this service had been kept in force beyond its expiration date (April 13, 1996), under 5 U.S.C. section 558(c) of the Administrative Procedures Act, as implemented in Part 377 of our regulations, pending action on United's renewal application.

Special Conditions/Remarks: The merits of the joint application will be considered only after receipt of any answers filed.

NEW
NOTICE OF ACTION TAKEN

April 29, 1996

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This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Joint Application of **United Air Lines, Inc. and Lufthansa German Airlines** filed **4/18/96** in Docket **OST-96-1285**

XX Exemption pursuant to section 49 USC 40109 and a Statement of Authorization under 14 CFR Part 207 to provide the following services:

Scheduled foreign air transportation of persons, property, and mail in the Germany-Amsterdam/Brussels/ Zurich-Washington (Dulles) market. The joint applicants state that the service will be provided under a code-share arrangement between the carriers. Under the terms of the arrangements, United would place Lufthansa's code on United's flights between Amsterdam, Brussels, and Zurich and Washington Dulles. Lufthansa will offer connecting services between these European gateways and points in Germany on its own services, will transfer Germany-U.S. traffic to the United flights at Amsterdam, Brussels and Zurich, and will also offer service to local traffic under its own designator code between these European points and Washington Dulles. The applicants state that initial operations will involve services between Brussels and Washington, with services from Amsterdam and Zurich to follow later.

The Joint Applicants state that United requires a Statement of Authorization under Part 207 because its existing Statement of Authorization to code share on U.S.-Germany services via intermediate points is limited to intermediate points served on a blind sector basis only (Order 96-3-37) and that Lufthansa needs an exemption to offer services between points in Germany and Washington, D.C. via the intermediate points Amsterdam, Brussels and Zurich, with local traffic rights between such intermediate points and Washington, D.C.

Applicant rep: **Joel Stephen Burton (202 637-9130 (United); James S. Campbell (202) 663-6336 (Lufthansa)**
DOT Analyst: **Linda Senese (202)366-2367**

DISPOSITION

XX Granted (subject to conditions, see below).

XX This action is consistent with Attachment E of the Memorandum of Consultations signed February 29, 1996, between the United States and the Federal Republic of Germany.

XX Except to the extent exempted or waived, this authority is subject to the terms, conditions and limitations indicated:

XX Holder's certificate of public convenience and necessity or foreign air carrier permit, as applicable.

XX Standard exemption conditions (attached)

*The above action was effective when taken: **April 29, 1996** through **April 29, 1997***

(See Reverse Side)

XX *Under assigned authority (14 CFR 385) by:*

Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of this
action.)

Special Conditions/Remarks: The authority granted above is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such 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).

By Notice of Action Taken dated April 22, 1996, we shortened the period for filing answers to the above-referenced application to April 25, 1996. No answers were received.

NEW

NOTICE OF ACTION TAKEN May 29,

1996

---This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of WORLD AIRWAYS, INC. filed 3/8/96 in Docket OST-96-1137

XX Exemption for two years under 49 U.S.C. section 40109 to engage in scheduled foreign air transportation of persons, property and mail between New York, New York (Newark) and Dakar, Senegal and beyond to Johannesburg, South Africa with local traffic rights between Dakar and Johannesburg. (World currently holds exemption authority to serve Johannesburg, Order 96-3-28.)

Applicant rep: Julie Sande (703) 834-9200 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX **Granted (in part, see below)**

XX **Request for longer term authority dismissed without prejudice**

*The above action was effective when taken: May 29, 1996, thru March 14, 1997,
(or until 90 days after final Department action on World's certificate application in Docket OST-96-1136, whichever occurs earlier).*

XX *Under assigned authority (14 CFR 385) by:*

*Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of this
action.)*

XX **Authority granted between New York and Dakar is consistent with the aviation agreement between the United States and Senegal, and the authority granted beyond Dakar to Johannesburg is consistent with the state of overall aviation relations between the United States and Senegal. Moreover, the authority granted to serve South Africa is consistent with the provisions of an aviation agreement initialed in Washington by representatives of the United States and South Africa on March 29, 1996.**

*Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX World's certificate of public convenience and necessity***

XX Standard Exemption Conditions (attached)

(See Reverse Side)

Remarks: World has been allocated a total of seven weekly round-trip frequencies to operate its New York-Johannesburg services and the authority granted here is coextensive with the duration of its existing authority to serve South Africa. See Notice of Action Taken dated May 9, 1996, filed in Docket OST-96-1339 and Order 96-3-28. We dismissed the balance of World's application without prejudice to refileing.

NEW
NOTICE OF ACTION TAKEN

APRIL 24, 1996

---This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Applications of World Airways, Inc. filed 4/11/96 and 4/19/96 in Docket OST-96-1254

XX Exemption to engage in foreign air transportation of persons, property, and mail between San Juan, Puerto Rico, and Puerto Plata, Dominican Republic, and beyond to Cologne, Germany, with local traffic rights between Puerto Plata and Cologne. World states that it proposes to begin its services to the Dominican Republic on or about June 1, 1996, and requests that the exemption be issued for two years. World states that it will initially operate one weekly flight between San Juan and Puerto Plata with DC-10-30 aircraft.

XX Request for one weekly fifth-freedom frequency for third-country-Germany services during the summer 1996 season for services between the Dominican Republic and Cologne, Germany, using DC-10-30 aircraft.

Applicant rep: Julie Sorenson Sande (703) 834-9200 DOT Analyst: Linda Senese (202)366-2367

DISPOSITION

XX Granted

The exemption authority was effective when action was taken (April 23, 1996) and remains in effect through April 23, 1998. The fifth freedom frequency allocation is effective May 15, 1996 through October 31, 1996. **(See below)**

XX Under assigned authority (14 CFR 385) by:

Paul L. Gretch, Director
Office of International Aviation
*(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of this
action.)*

XX Authority granted is consistent with the 1994 Transitional Arrangement for Air Transport Services between the United States and the Federal Republic of Germany. The authority granted for services between San Juan and Puerto Plata is consistent with the Air Transport Services Agreement between the United States and the Dominican Republic. The authority granted beyond the Dominican Republic is extrabilateral, but is consistent with the overall state of aviation relations between the United States and the Dominican Republic.

(See Reverse Side)

Except to the extent exempted or waived, this authority is subject to the terms, conditions and limitations indicated:

XX Holder's certificate of public convenience and necessity.

XX Standard exemption conditions (attached)

Special Conditions/Remarks: It is our practice to grant frequency allocations for U.S.-Germany services only for each traffic season. Consistent with that practice, the fifth-freedom frequency allocated World for Germany services granted here is only for the current summer season (*i.e.*, through October 31, 1996). Also, the fifth-freedom frequency allocation does not become effective until May 15, 1996, coextensive with the effective dates of World's third and fourth freedom frequency allocations for U.S.-Germany services. (See Order 96-3-22).

The Government of Puerto Rico filed an answer in support of the applicant's exemption application.

We granted this authority without awaiting expiration of the 15-day answer period with the consent of all parties served.