



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

Order 96-7-42

Served August 5, 1996

Issued by the Department of Transportation
on the 30th day of July, 1996

Applications of

**Alaska Airlines, Inc.
America West Airlines, Inc.**

**American Airlines, Inc.
American International Airways, Inc.
Continental Airlines, Inc.**

**Delta Air Lines, Inc.
Fine Airlines, Inc.
Northwest Airlines, Inc.**

United Parcel Service Co

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

**Dockets OST-96-1306
OST-95-349
OST-96-1069
49655
OST-96-1376
49687
OST-96-1080
OST-96-1164
50219
OST-96-1039
OST-96-1332
OST-96-1440
OST-96-1493**

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.

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.

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.

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 June 5, 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-96-1306 for:

XX Waiver of 180 day advance filing requirement under Part 377

XX Certificate renewal under 49 U.S.C. 41102 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between (1) the terminal point Los Angeles, California, and the terminal point Mazatlan, Mexico; (2) the terminal point Los Angeles, California, and the terminal point Puerto Vallarta, Mexico; (3) the terminal point San Francisco, California, and the terminal point San Jose del Cabo, Mexico; and (4) the terminal point San Diego, California, and the terminal point San Jose del Cabo, Mexico. Alaska also requested a waiver of the 180 day advance filing requirement under Part 377 of the Department's regulations in order to invoke its rights to provide continuous service during the pendency of this application.

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

DISPOSITION

XX Granted Waiver Request (Part 377)

XX Deferred on Remainder of Application

The above action was effective when taken: June 4, 1996.

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: **Alaska's certificate authority for these routes (on certificate Route 559) , is due to expire July 24, 1996. Grant of the requested waiver under Part 377 will keep**

the authority in effect until the Department takes final action on the carrier's application to renew the authority.

RENEWAL

NOTICE OF ACTION TAKEN June 27,

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 AMERICA WEST AIRLINES, INC. filed 6/5/96 in Docket OST-95-349 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 Phoenix, Arizona, and the terminal point Puerto Vallarta, Mexico; and (2) the terminal point Phoenix, Arizona, and the terminal point Manzanillo, Mexico.

Applicant rep: John E. Gillick (202)775-9800 DOT Analyst: Linda Lundell (202)366-2336

DISPOSITION

XX **Granted (see remarks)**

The above action was effective when taken: June 27, 1996, until June 27, 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 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.**

C O R R E C T E D *

RENEWAL

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.

Application of AMERICA WEST AIRLINES, INC. filed 2/9/96 in Docket OST-96-1069 for:

XX Exemption for one year 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 Mexico City, Mexico.

Applicant rep: John Gillick (202)775-9800 DOT Analyst: Linda Lundell (202)366-2336

D I S P O S I T I O N

XX **Granted (see remarks)**

The above action was effective when taken: March 7, 1996, through March 7, 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 **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.**

* Corrects Notice of Action Taken dated March 7, 1996, to reflect correct docket number OST-96-1069.

CORRECTED COPY*

NEW

NOTICE OF ACTION TAKEN July 1, 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 7/13/94 in Docket 49655

XX Exemption for one year under 49 U.S.C. section 40109 to integrate its existing authority to provide scheduled foreign air transportation of persons, property and mail on Routes 137, 370, 487, 576, 602, 605, and 648, and under exemption authority it holds to permit foreign air transportation services involving any points named on the above certificates of public convenience and necessity and exemptions.

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

DISPOSITION

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

The above action was effective when taken: June 11, 1996, through June 11, 1997, (or until 90 days after final Department action on American's certificate application in Docket 49654, 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.)*

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

* Corrects Notice of Action Taken dated June 11, 1996, to reflect the award of integration authority involving exemption authority in addition to the named routes.

(See Reverse Side)

Special Conditions/Remarks: The authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved.

Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon American additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless American first notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in American's authority by virtue of the route integration exemption granted here, but that are not then being used by American, the holding of such authority by route integration will not be considered as providing any preference for American in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Continental Airlines filed an answer stating that it does not oppose American's application provided the Department approves Continental's application for integration authority. We have contemporaneously approved Continental's application. See Notice of Action Taken, filed in Docket 49687.

The routes generally authorize service to numerous points and countries in the Caribbean, Europe, the Near East and Far East.

NEW

NOTICE OF ACTION TAKEN June 13,

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 INTERNATIONAL AIRWAYS, INC. filed 5/16/96 in Docket OST-96-1376

XX Exemption for two years under 49 U.S.C. section 40109 to engage in scheduled foreign air transportation of property and mail between Honolulu, Hawaii, and Jakarta, Indonesia, via the intermediate point Melbourne, Australia.

Applicant rep: Mark W. Atwood (202) 342-5200 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX **Granted**

The above action was effective when taken: June 4, 1996, through June 4, 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 aviation agreements between the United States and Indonesia and between the United States and Australia.**

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

XX Standard Exemption Conditions (attached)

AMEND

NOTICE OF ACTION TAKEN

June 27,

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 INTERNATIONAL AIRWAYS, INC. filed 6/24/96
in Docket OST-96-1376

XX Amend exemption under 49 U.S.C. section 40109 to add Guam as a new coterminal point under its existing authority to engage in scheduled foreign air transportation of property and mail between Honolulu, Hawaii, and Jakarta, Indonesia, via the intermediate point Melbourne, Australia.

Applicant rep: Mark W. Atwood (202) 342-5200 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX **Granted**

The above action was effective when taken: June 27, 1996, thru June 4, 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 aviation agreement between the United States and Indonesia and with the state of overall aviation relations between the United States and Australia.**

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

XX **Standard Exemption Conditions (attached)**

Remarks: We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.

The duration of the authority is coextensive with the existing exemption. See Notice of Action Taken dated June 13, 1996.

CORRECTED COPY*

NEW

NOTICE OF ACTION TAKEN July 1, 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 7/28/94 in Docket 49687

XX Exemption for one year under 49 U.S.C. section 40109 to integrate its existing authority to provide scheduled foreign air transportation of persons, property and mail on Routes 29-F, 59, 82-F, 157, 165, 381, 383, 482, 509, 514, 561, and 629, and under exemption authority it holds to permit foreign air transportation services involving any points named on the above certificates of public convenience and necessity and exemptions.

Applicant rep: R. Bruce Keiner (202) 624-2615 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX **Granted** (Subject to conditions, See below)

The above action was effective when taken: June 11, 1996, until June 11, 1997, (or until 90 days after final Department action on Continental's certificate application in Docket 49686, 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.)*

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

XX Standard Exemption Conditions attached

* Corrects Notice of Action Taken dated June 11, 1996, to reflect the award of integration authority involving exemption authority in addition to the named routes.

(See Reverse Side)

Special Conditions/Remarks: The authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved.

Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Continental additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Continental first notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in Continental's authority by virtue of the route integration exemption granted here, but that are not then being used by Continental, the holding of such authority by route integration will not be considered as providing any preference for Continental in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

The routes generally authorize service to numerous points and countries in the Caribbean, Europe, Mexico, South America, the Near East and Far East.

NEW

NOTICE OF ACTION TAKEN

July 9, 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.

In the Matter of the Application of **CONTINENTAL AIRLINES, INC.,** filed: **February 16, 1996,** in **Docket OST-96-1080** and **Undocketed** for:

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

Continental requests, among other things, a statement of authorization under Part 207 to permit Continental to display the "CM" designator code of Compania Panamena de Aviacion, S.A. (Copa), on various flights operated by Continental as shown in Appendix A to this Notice, and an exemption from 49 U.S.C. Section 41101 permitting Continental to 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 operation of Houston-Panama-Ecuador code-share services with Copa. Continental requests that the requested authority be granted for a two-year period.²

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 Copa on all routes where they are listed in Appendix A. We also granted Continental's request for route integration of its authority to serve Panama City and Santo Domingo**

XX **Dismissed Request for Longer-Term Authority**

XX **Deferred Request for U.S.-Ecuador Frequency Allocation**

The above actions were effective when taken: **July 9, 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 Panama and the United States and the Dominican Republic**

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)

² See Notice of Action Taken dated May 16, 1996, for a complete description of this application.

Responsive Pleadings: United stated that it does not oppose the application with respect to the contemplated codeshare, but urged 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 noted that it was not able to obtain approval from the Dominican Republic to implement a similar code share with ALM, and requested that the Department approach the Dominican Republic and urge approval of both United's and Continental's code-share services. United also opposed Continental's request for 3.5 additional Ecuador frequencies for use by a third-country carrier (COPA), stating that U.S. carrier frequencies should not be used for services operated by foreign carriers.

In response, Continental argued that there was no basis for the conditions that United requested, and 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. We have contacted the government of Panama regarding their code-share policies and have received a response supporting the conclusion that it would approve similar code-share requests involving U.S. and third-country carriers. Thus, we granted authority for Continental to engage in code-share services with Copa, subject to the special conditions listed below. We made the authority coextensive with the approval of other portions of Continental's application in this docket (See below), and dismissed, without prejudice, Continental's request for longer-term authority.

We found that the authority granted here is in the public interest. The authority granted is supported by reciprocity on the part of the foreign carrier's homeland. In this connection, however, we emphasize that we granted this authority in full reliance on our expectation that the Government of Panama will approve U.S. carrier requests to implement similar code-share operations as well as U.S. carrier code-share requests involving 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. Continental and Copa should have no expectation that the code-share authorities granted here would continue in such circumstances.

With respect to United's concern regarding the Dominican Republic's approval of its proposed code-share arrangement with ALM, we have decided to transmit, through diplomatic channels, notification to the Dominican Republic that the Department supports both the United/ALM and Continental/COPA code-share arrangements.

Conditions: 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).

Comments: By Notice of Action Taken dated May 16, 1996, we orally granted Continental's application to code share with LACSA and TACA in the markets listed in the attached Appendix. Our action here grants Continental's application with respect to its proposed operations with Copa. Continental's application to engage in code-share service with Nica, a carrier of Nicaragua, and to engage in certain code-share services with Aviateca, a carrier of Guatemala, and its request for exemption and route integration authority to serve certain Mexico markets in conjunction with codeshare operations with Aviateca remain pending.

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 Lacsa ** 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 as reflected in this Notice.**

** Granted orally as reflected in the Notice dated May 16, 1996.

NEW

NOTICE OF ACTION TAKEN May 30,

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 Newark-Dakar Portion (see remarks). (Remainder of route authority was granted earlier (see Notice of Action Taken April 16, 1996).

XX Dismissed Request for Longer-Term Authority

The above action was effective when taken: May 29, 1996, through March 14, 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.)

* **The authority granted is coextensive with World's authority in this market.**

(See Reverse Side)

XX Authority granted between Newark 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. Further, the authority granted to serve South Africa is consistent with the provisions of an aviation agreement initialed in Washington, D.C., 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 Holder's certificate of public convenience and necessity.**

XX Standard Exemption Conditions (attached)

Remarks: We dismissed, without prejudice, Continental's request for longer-term authority in this application. With the exception of the Dakar request, we granted earlier the remainder of Continental's application for the requested route authority (See Notice of Action Taken dated April 16, 1996). In taking this action, there are no outstanding requests in this application.

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.

CORRECTED COPY*

NEW

NOTICE OF ACTION TAKEN July 1, 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 **DELTA AIR LINES, INC.** filed **3/17/95** in Docket **50219**

XX Exemption for one year under 49 U.S.C. section 40109 to integrate its existing authority to provide scheduled foreign air transportation of persons, property and mail on Routes 27-F, 52, 114, 152, 154, 158, 167, 178, 404, 515, 526, 562, 585, 586, 606, 616, 617, 618, 620, 622, and 630, and under exemption authority it holds to permit foreign air transportation services involving any points named on the above certificates of public convenience and necessity and exemptions.

Applicant rep: **Robert E. Cohn (202) 663-8060** DOT Analyst: **Gerald Caolo (202) 366-2406**

DISPOSITION

XX **Granted** (Subject to conditions, See below)

*The above action was effective when taken: **June 11, 1996,** until **June 11, 1997,** (or until 90 days after final Department action on Delta's certificate application in Docket 50218, 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.)

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

XX **Standard Exemption Conditions attached**

* Corrects Notice of Action Taken dated June 11, 1996, to reflect the award of integration authority involving exemption authority in addition to the named routes.

(See Reverse Side)

Special Conditions/Remarks:

The authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved.

Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Delta additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Delta first notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in Delta's authority by virtue of the route integration exemption granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for Delta in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

American Airlines filed an answer stating that it does not oppose Delta's application provided the Department approves American's application for integration authority. We have contemporaneously approved American's application. See Notice of Action Taken, filed in Docket 49655.

The routes generally authorize service to numerous points and countries in Canada, the Caribbean, Europe, the Near East and Far East.

RENEW

NOTICE OF ACTION TAKEN

June 14,

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 FINE AIRLINES, INC. filed 1/30/96 in Docket OST-96-1039

XX Renew for two years (1) exemption under 49 U.S.C. section 40109 to engage in scheduled foreign air transportation of property and mail between Miami, Florida, and the coterminal points Quito and Guayaquil, Ecuador and (2) authority to integrate this authority with its existing Caribbean and Central or South American authority and (3) allocation of two weekly frequencies to conduct these services.

XX Waiver of 14 CFR 377.10(c)

Applicant rep: Jeffrey N. Shane (202) 663-6000 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX **Granted (Subject to conditions, See Below)**

The above action was effective when taken: June 14, 1996, through June 14, 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 aviation agreement between the United States and Ecuador.**

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

(See Reverse Side)

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

Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Fine additional rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Fine first notifies us of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited entry route rights that are included in Fine's authority by virtue of the route integration exemption granted here, but that are not then being used by Fine, the holding of such authority by route integration will not be considered as providing any preference for Fine in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Consistent with our standard practice, the frequency allocation awarded is subject to the condition that it will expire automatically and the frequencies will revert back to the Department if they are not used for 90 days. (See Orders 95-11-9 and 96-2-17).

We granted Fine a waiver from the advance filing requirements of 14 CFR Part 377 to ensure that Fine's authority would continue in effect beyond its expiration date (February 8, 1996), pending action on its renewal

NEW

NOTICE OF ACTION TAKEN June 13,

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 NORTHWEST AIRLINES, INC. filed 5/2/96 in Docket OST-96-1332 for:

XX Exemption under 49 U.S.C. 40109 to engage in the following service.

**Scheduled foreign air transportation of persons, property and mail in the San Francisco-Mazatlan/
Puerto Vallarta/San Jose del Cabo, Los Angeles-Mazatlan/Puerto Vallarta/San Jose del Cabo, Phoenix-Puerto Vallarta/San Jose del Cabo, and San Diego-San Jose del Cabo markets.
Northwest proposes to operate this service under a code-share arrangement on flights operated by Alaska Airlines beginning June 1, 1996.**

Applicant rep: Megan Rae Poldy (202)842-3193 DOT Analyst: Linda Lundell (202)366-2336

DISPOSITION

XX **Granted (see remarks)**

The above action was effective when taken: June 13, 1996, through June 13, 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 **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)**

Remarks: The authority granted is subject to the dormancy notice conditions set forth in condition #7 of Appendix A of Order 88-10-2.

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

(See Reverse Side)

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).

Responsive Pleadings: United Air Lines and Reno Air, Inc., filed answers to Northwest's application. Northwest filed a reply to United's answer, and Alaska Airlines filed a reply to Reno's answer.³

United stated that it has no objection to Northwest's application so long as Northwest does not require a U.S. carrier designation to offer the code-share services proposed. United stated further that, to cover the possibility that the Mexican aviation authorities might require Northwest's designation for these services, Northwest's authority should be subject to a condition that it terminate 30 days after the "U.S. designates another carrier to operate direct services" in the market(s). In its reply, Northwest stated that it shares United's view that no designation should be required for the code-share services, but it opposes imposition of a contingent termination condition.

It has been the Department's policy with respect to U.S. carrier code-share services in the U.S.-Mexico market to designate only the U.S. carrier actually performing the air transportation services at issue.⁴ Given our experience on this issue with the Mexican authorities, the speculative nature of United's concern, and our ability to reexamine the exemption at any time should this become necessary, we regarded the imposition of the condition proposed by United as unnecessary.

Reno opposed Northwest's application to the extent it seeks exemption authority for the San Francisco-Puerto Vallarta/San Jose del Cabo markets.⁵ Reno argues that it has a pending exemption application to serve Puerto Vallarta and San Jose del Cabo from San Jose (Alaska has filed a competing application), and that grant of Northwest's exemption application for San Francisco-Mexico services (to be operated by Alaska), would be anticompetitive since it would increase Alaska's market power in the Bay Area-Puerto Vallarta/San Jose del Cabo markets before competitive service is authorized from San Jose. In its reply, Alaska argued that the Department has found that San Jose and San Francisco are separate traffic generating sources, and that Reno's opposition should be summarily rejected and the Department should approve Northwest's application.

We were not prepared to withhold authority for services by Northwest in the San Francisco-Puerto Vallarta/San Jose del Cabo markets until we reached a decision on Reno's and Alaska's competing applications for San Jose-Puerto Vallarta/San Jose del Cabo authority. The services proposed are consistent with our aviation agreement with Mexico, and we saw nothing in our award of authority to Northwest here that would prejudice our ability to address the applications of Reno and Alaska for

³ Alaska's reply was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion.

⁴ Based on indications of comity and reciprocity, we have followed the same policy with respect to code-share services involving Mexican carriers as well. The Mexican authorities have not objected to the policy for either U.S. or Mexican carriers.

⁵ Reno also shares the designation concerns expressed by United and Northwest.

San Jose-Mexico authority. We note, however, that by Order 96-6-29, the Department has tentatively decided to select Reno Air to serve the San Jose-Puerto Vallarta/San Jose del Cabo markets.

NEW

NOTICE OF ACTION TAKEN **June 27,**

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 **NORTHWEST AIRLINES, INC.** filed **6/6/96** in Docket **OST-96-1440** 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 the terminal point Minneapolis/St. Paul, Minnesota, and the terminal point San Jose del Cabo, Mexico. Northwest plans to begin seasonal service in the market on December 21, 1996, but requests that the authority be granted immediately so that it can began advance marketing and sales activities.

Applicant rep: **Megan Rae Poldy (202)842-3193** DOT Analyst: **Linda Lundell (202)366-2336**

DISPOSITION

XX **Granted (see remarks)**

The above action was effective when taken: **June 27, 1996,** until **June 27, 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: 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 for the these services will begin December 21, 1996, Northwest's proposed start-up date for services in this market.

NEW

NOTICE OF ACTION TAKEN July 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 UNITED PARCEL SERVICE CO. filed 6/28/96 in Docket OST-96-1493 for:

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

Scheduled foreign air transportation of property and mail between a point or points in the United States and Osaka, Japan, and beyond Osaka to two points. UPS proposes to provide service between Anchorage, Alaska and Ontario, California, on the one hand, and Osaka, on the other hand, and beyond Osaka to Hong Kong (without local traffic rights) and Taipei, Taiwan (with full traffic rights).

Applicant rep: David L. Vaughan (202) 955-9600 DOT Analyst: Gerald Caolo (202)366-2406

DISPOSITION

XX Granted (in part, see below)

XX Balance Dismissed

The above action was effective when taken: July 10, 1996, through July 10, 1998, (or until 90 days after a final Department action on UPS' corresponding certificate application in Docket OST-96-1492, 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 Japan.

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.

Partial Grant/Special Conditions/Remarks: We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.

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We decided to limit our approval to serve points beyond Osaka to the two points proposed in UPS' application- Hong Kong and Taipei. Our general policy in awarding exemption authority is to authorize those services that the carrier actually proposes to operate. Broader authority is considered in the context of the certificate application. Furthermore, under current U.S.-Japan aviation agreements, UPS is limited to serving no more than two points beyond Osaka , one with and one without, local traffic rights.

Any services operated beyond Osaka are also subject to the bilateral aviation agreements between the United States and the foreign countries involved.

