



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

Served: April 9, 1997

Issued by the Department of Transportation  
on the 3<sup>rd</sup> day of April, 1997

Applications of

VARIOUS FOREIGN AIR CARRIERS

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

Dockets    OST-97-2091  
              OST-97-2077  
              OST-97-2073  
              OST-97-2068  
              OST-97-2065  
              OST-96-1667  
              OST-95-774  
              OST-95-219

ORDER

The foreign air carriers referenced in the attached Notices of Action Taken 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 foreign air carrier permit, 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 our aviation relationship with the applicant's homeland, that each applicant was qualified to perform its proposed operations, and that each application should be approved.

For applicant carriers seeking initial operating authority, we determined, based on the record in those proceedings, that those carriers were financially and operationally qualified to conduct the services they proposed, and, unless otherwise noted, that they were substantially owned and effectively controlled by citizens of their respective homelands.

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.

ACCORDINGLY,

1. We confirm the actions described in the attached Notices of Action Taken, which granted the referenced foreign air carriers (1) exemptions from the provisions of sections 41301, and where necessary 41504, and/or other sections of Title 49 of the U.S. Code; and/or (2) relief or authorizations 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 Appendix A, 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.

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)

*An electronic version of this document is available on the World Wide Web at:  
<http://www.dot.gov/general/orders/aviation.html>*

## CONDITIONS OF AUTHORITY

## APPENDIX A

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
  - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
  - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).



**U.S. Department of  
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# Memorandum

Subject: ACTION: Order confirming staff actions on  
various Docketed applications

Date:

From: Paul L. Gretch, Director  
Office of International Aviation, X-40

Reply to  
Attn. of:

To: Paulette V. Twine, Chief  
Documentary Services/TASC, SVC121.30

Please issue the attached order confirming actions taken under assigned authority.

Attachment



**U.S. Department of  
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## NOTICE OF ACTION TAKEN

### DOCKET OST-97-2091

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 decisional document will be issued as soon as possible.

Applicant: GUJA S.A. de C.V.

Date Filed: January 23, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct passenger charter operations between Mexico and the United States, and other passenger charters operations in accordance with 14 CFR Part 212, using small equipment.

If renewal, date of last action(s): New authority.

Applicant representative(s): Javier Tejado Casis, 011-52-13-662-1856

Responsive pleadings: None.

### DISPOSITION

Action: Approved.

Action date: March 5, 1997

Effective date of authority granted: March 5, 1997, through March 5, 1998

Basis for approval: United States-Mexico Air Transport Services Agreement of August 15, 1960, as amended and extended (Agreement).

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of Appendix A.

Special conditions/Partial grant/Denial basis/Remarks: We find that the carrier is operationally and financially qualified to conduct the operations it proposes and that it is substantially owned and effectively controlled by citizens of Mexico. In the conduct of these operations, the carrier must adhere to all applicable provisions of the U.S.-Mexico Agreement. In the conduct of these operations, the carrier may only use aircraft capable of carrying no more than 60 passengers and having a maximum payload capacity of no more than 18,000 pounds. The above grant includes authority to operate Third and Fourth Freedom charter operations. While we have subjected Mexican carriers conducting charters with large aircraft to prior approval of their Third and Fourth Freedom charters, consistent with the provisions of the Agreement, (see Order 92-2-7 at 5), we determined that a Third/Fourth Freedom prior approval requirement was not necessary on public interest grounds in the case of this carrier, since it will be conducting these operations solely with small aircraft. (Other charter operations to/from the United States under this authority, however, are subject to prior approval under 14 CFR Part 212.)

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



**U.S. Department of  
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## NOTICE OF ACTION TAKEN

### DOCKET OST-97-2077

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 decisional document will be issued as soon as possible.

Applicant: AEROSIYUSA, S.A.

Date Filed: January 16, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct passenger charter operations between Mexico and the United States, and other passenger charters operations in accordance with 14 CFR Part 212, using small equipment.

If renewal, date of last action(s): New authority.

Applicant representative(s): Julio Gonzalez Santos, 011-52-83-45-67-92

Responsive pleadings: None.

### DISPOSITION

Action: Approved.

Action date: February 14, 1997

Effective date of authority granted: February 14, 1997, through February 14, 1998

Basis for approval: United States-Mexico Air Transport Services Agreement of August 15, 1960, as amended and extended (Agreement).

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of Appendix A.

Special conditions/Partial grant/Denial basis/Remarks: We find that the carrier is operationally and financially qualified to conduct the operations it proposes and that it is substantially owned and effectively controlled by citizens of Mexico. In the conduct of these operations, the carrier must adhere to all applicable provisions of the U.S.-Mexico Agreement. In the conduct of these operations, the carrier may only use aircraft capable of carrying no more than 60 passengers and having a maximum payload capacity of no more than 18,000 pounds. The above grant includes authority to operate Third and Fourth Freedom charter operations. While we have subjected Mexican carriers conducting charters with large aircraft to prior approval of their Third and Fourth Freedom charters, consistent with the provisions of the Agreement, (see Order 92-2-7 at 5), we determined that a Third/Fourth Freedom prior approval requirement was not necessary on public interest grounds in the case of this carrier, since it will be conducting these operations solely with small aircraft. (Other charter operations to/from the United States under this authority, however, are subject to prior approval under 14 CFR Part 212.)

Action taken by Paul L. Gretch, Office of International Aviation, under assigned authority (14 CFR 385). (Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



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Office of the Secretary  
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## NOTICE OF ACTION TAKEN

### DOCKET OST-97-2073

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 decisional document will be issued as soon as possible.

Applicant: AVIACION COMERCIAL de AMERICA, S.A. de C.V. Date Filed: January 14, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct passenger charter operations between Mexico and the United States, and other passenger charters operations in accordance with 14 CFR Part 212, using small equipment.

If renewal, date of last action(s): New authority.

Applicant representative(s): Carl W. Vogt, 202-662-0200

Responsive pleadings: None.

### DISPOSITION

Action: Approved.

Action date: February 13, 1997

Effective date of authority granted: February 13, 1997, through February 13, 1998

Basis for approval: United States-Mexico Air Transport Services Agreement of August 15, 1960, as amended and extended (Agreement).

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of Appendix A.

Special conditions/Partial grant/Denial basis/Remarks: We find that the carrier is operationally and financially qualified to conduct the operations it proposes and that it is substantially owned and effectively controlled by citizens of Mexico. In the conduct of these operations, the carrier must adhere to all applicable provisions of the U.S.-Mexico Agreement. In the conduct of these operations, the carrier may only use aircraft capable of carrying no more than 60 passengers and having a maximum payload capacity of no more than 18,000 pounds. The above grant includes authority to operate Third and Fourth Freedom charter operations. While we have subjected Mexican carriers conducting charters with large aircraft to prior approval of their Third and Fourth Freedom charters, consistent with the provisions of the Agreement, (see Order 92-2-7 at 5), we determined that a Third/Fourth Freedom prior approval requirement was not necessary on public interest grounds in the case of this carrier, since it will be conducting these operations solely with small aircraft. (Other charter operations to/from the United States under this authority, however, are subject to prior approval under 14 CFR Part 212.)

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



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

## NOTICE OF ACTION TAKEN

### DOCKET OST-97-2068

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 decisional document will be issued as soon as possible.

Applicant: LTU LUFTTRANSPORT-UNTERNEHMEN SUD GmbH. & Co.  
FLUGGESELLSCHAFT

Date filed: January 13, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct: (1) charter operations, carrying persons, property and mail, between any point or points in Germany and any point or points in the United States; and between any point or points in the United States and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Germany for the purpose of carrying local traffic between Germany and the United States; and (2) other charters pursuant to 14 CFR Part 212.

If renewal, date of last action(s): The applicant holds authority to conduct charter operations to/from the United States under its foreign air carrier permit, issued by Order 91-7-38 on July 16, 1991. The subject application, however, requests an expansion of that authority to include rights to which the applicant is entitled under the current U.S.-Germany Air Transport Agreement.

Applicant representative(s): Frederick S. Hird, Jr., 202-778-0878  
Responsive pleadings: None.

### DISPOSITION

Action: Approved.

Action date: March 3, 1997

Effective date of authority granted: March 3, 1997, through March 3, 1998, or until 90 days after the Department submits an order for Presidential review under 49 USC section 41307 in Docket OST-97-2066 (the applicant's related request for amendment of its foreign air carrier permit), whichever occurs first.

Basis for approval: United States-Germany Air Transport Agreement, as amended.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Foreign air carrier permit conditions.

Special conditions/Partial grant/Denial basis/Remarks:

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



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

## NOTICE OF ACTION TAKEN

### DOCKET OST-97-2065

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 decisional document will be issued as soon as possible.

Applicant: LTU LUFTTRANSPORT-UNTERNEHMEN GmbH. & Co. KG.

Date filed: January 13, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct: (1) scheduled, combination services from points behind Germany via Germany and intermediate points to a point or points in the United States and beyond; (2) charter operations, carrying persons, property and mail, between any point or points in Germany and any point or points in the United States; and between any point or points in the United States and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to Germany for the purpose of carrying local traffic between Germany and the United States; and (3) other charters pursuant to 14 CFR Part 212.

If renewal, date of last action(s): The applicant holds authority to conduct scheduled and charter operations to/from the United States under its foreign air carrier permit, issued by Order 94-11-8 on October 31, 1994. The subject application, however, requests an expansion of that authority to include rights to which the applicant is entitled under the current U.S.-Germany Air Transport Agreement.

Applicant representative(s): Frederick S. Hird, Jr., 202-778-0878

Responsive pleadings: None.

### DISPOSITION

Action: Approved.

Action date: March 5, 1997

Effective date of authority granted: March 5, 1997, through March 5, 1998, or until 90 days after the Department submits an order for Presidential review under 49 USC section 41307 in Docket OST-97-2063 (the applicant's related request for amendment of its foreign air carrier permit), whichever occurs first.

Basis for approval: United States-Germany Air Transport Agreement, as amended.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: Foreign air carrier permit conditions.

Special conditions/Partial grant/Denial basis/Remarks:

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



**U.S. Department of  
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Office of the Secretary  
of Transportation

## **NOTICE OF ACTION TAKEN**

### **DOCKET OST-96-1667**

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 decisional document will be issued as soon as possible.

Applicant: FAST AIR CARRIER, S.A. Date filed: August 23, 1996, as amended August 29, 1996

Relief requested: Exemption from 49 USC section 41301 to permit Fast Air Carrier to serve (conducting all-cargo operations) Buenos Aires, Argentina, as an additional intermediate point on its scheduled services between Chile and the U.S. coterminal points Miami, Florida, and New York, New York, for a period of one year (that is, through September 19, 1997).

If renewal, date of last action(s): January 8, 1997 (see Notice of Action Taken on January 8, 1997).

Applicant representative(s): Ana Marie Escagedo, 305-373-6600

Responsive pleadings: Same as set forth in our Notice of Action Taken (in this Docket) of September 19, 1996. Specifically, on September 10, 1996, Fine Air filed an answer to Fast Air's request. Fine stated that it did not oppose Fast Air's request. It did, however, urge the Department, in acting on future requests of foreign carriers for Fifth Freedom authority, to curtail Latin American carriers' Fifth Freedom authorities in markets where Third and Fourth Freedom opportunities for U.S. carriers are limited. (We addressed Fine's comments in our September 19 Notice.)

On September 13, 1996, Continental filed an answer to the request. Continental stated that it did not object to grant of Fast Air's request through November 30, 1996, but urged us not to grant this authority beyond that date unless the Government of Chile (GOC) authorizes it to conduct nonstop Newark-Chile scheduled, combination services. Continental stated that the provisions of the U.S.-Chile 1994 Exchange of Notes, which precludes the United States from designating an additional carrier and limit frequencies available to U.S. carriers, expires December 1, 1996; that it has been designated by the United States to conduct its proposed services to Chile and is applying to the GOC for that authority; and that the GOC has indicated that it will seek continuing restrictions on U.S. designations and frequencies beyond November 30, 1996. On September 17, 1996, Fast Air submitted a reply to the answer of Continental.

### **DISPOSITION**

Action: Extended through September 19, 1997.

Action date: February 26, 1997

Effective dates of authority granted: February 26, 1997, through September 19, 1997.

Basis for approval: United States-Chile Air Transport Agreement.

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

- \_\_\_ Standard exemption conditions
- XX Foreign air carrier permit conditions

Special conditions/Partial grant/Denial basis/Remarks: In reaching our decision to extend Fast Air's authority, we found that the subject all-cargo authority is bilaterally agreed. We found further that the aviation negotiations between the Governments of the United States and Chile (referred to in our previous Notices in this Docket) had then produced a new bilateral arrangement, initialed February 25, 1997, in Santiago, that will offer additional economic opportunities for the carriers of both countries. In light of these circumstances, we found that the public interest warranted extension of the subject authority through September 19, 1997.

Action taken by:

Paul L. Gretch, Director  
Office of International Aviation  
under assigned authority (14 CFR 385)

(Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)



**U.S. Department of  
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Office of the Secretary  
of Transportation

## NOTICE OF ACTION TAKEN

### DOCKET OST-95-774

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 decisional document will be issued as soon as possible.

Applicant: ROYAL TONGAN AIRLINES

Date filed: November 26, 1996

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to continue to conduct scheduled, combination services between the terminal point Tongatapu, Tonga, and the coterminal points Honolulu, Hawaii, and Los Angeles, California, using equipment wet leased from a duly authorized and properly supervised U.S. or foreign air carrier.

If renewal, date of last action(s): December 12, 1995 (confirmed by Order 96-1-45).

Applicant representative(s): Charles F. Donley and Robert D. Papkin, 202-626-6840

Responsive pleadings: None.

### DISPOSITION

Action: Approved.

Action date: March 4, 1997

Effective date of authority granted: March 4, 1997, through March 4, 1998.

Basis for approval: Reciprocity with Tonga.

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

- XX Standard exemption conditions
- \_\_\_ Foreign air carrier permit conditions

Special conditions/Partial grant/Denial basis/Remarks: Royal Tongan shall only conduct these operations with equipment wet leased from a duly authorized and properly supervised U.S. or foreign air carrier.

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



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## NOTICE OF ACTION TAKEN

### DOCKET OST-95-219

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 decisional document will be issued as soon as possible.

Applicant: AEROMEXPRESS, S.A. de C.V.

Date filed: January 28, 1997

Relief requested: Exemption from 49 USC section 41301 to permit the applicant to conduct scheduled, all-cargo service between Mexico City, Mexico, and Atlanta, Georgia.

If renewal, date of last action(s): February 9, 1996 (confirmed by Order 96-2-48).

Applicant representative(s): William C. Evans, 202-371-6030

Responsive pleadings: None.

### DISPOSITION

Action: Approved.

Action date: March 4, 1997

Effective date of authority granted: March 4, 1997, through March 4, 1998.

Basis for approval: United States-Mexico Air Transport Services Agreement of August 15, 1960, as amended and extended (U.S.-Mexico Agreement).

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

- Standard exemption conditions
- Foreign air carrier permit conditions

Special conditions/Partial grant/Denial basis/Remarks: The authority is subject to all applicable terms, limitations and conditions of the U.S.-Mexico Agreement.

Action taken by Paul Gretch, Director, Office of International Aviation, under assigned authority (14 CFR 385). (Petitions for review may be filed from now until 10 days after the service date of the confirming order/letter. Filing of a petition shall not stay the effectiveness of this action.)

