

Order 97-9-38

Served: October 3, 1997



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

Issued by the Department of Transportation  
on the 29<sup>th</sup> day of September, 1997

Applications of

**AMERICAN AIRLINES, INC.  
AERO CALIFORNIA S.A. de C.V.**

under 49 U.S.C. 40109 for exemption (U.S.-  
Mexico and route integration; code-sharing)

**Dockets OST-97-2477  
OST-97-2481**

Joint Application of

**AMERICAN AIRLINES, INC.  
and  
AERO CALIFORNIA S.A. de C.V.**

for statements of authorization under 14 CFR Parts  
207 and 212 (reciprocal code-sharing services)

**Undocketed**

Joint Application of

**UNITED AIR LINES, INC.  
and  
COMPANIA MEXICANA de AVIACION,  
S.A. de C.V.**

under 49 U.S.C. 40109 for exemptions (U.S.-  
Mexico) and route integration; and for statements  
of authorization under 14 CFR Parts 207 and 212  
(reciprocal code-sharing services)

**Docket OST-96-1988**

Applications of

**DELTA AIR LINES, INC.  
DELTA AIR LINES, INC.  
and  
AEROVIAS de MEXICO, S.A. de C.V.**

under 49 U.S.C. 40109 for exemptions (U.S.-Mexico) and route integration; and for statements of authorization under 14 CFR Parts 207 and 212 (reciprocal code-sharing services)

**Docket OST-97-2161  
Undocketed**

Application of

**NORTHWEST AIRLINES, INC.<sup>1</sup>**

under 49 U.S.C. 40109 for exemptions (U.S.-Mexico) (code-sharing services with U.S. Partner)

**Dockets OST-96-1332**

Requests for Designations

**AMERICAN AIRLINES, INC.  
UNITED AIR LINES, INC.**

for scheduled air transportation services (U.S.-Mexico) with small aircraft, pursuant to Part 298 of the Department's regulations (code-sharing services with U.S. Partner)

**Undocketed**

## **FINAL ORDER AND ORDER ON RECONSIDERATION**

### **Summary**

By this order we make final our tentative decision in Order 97-7-31, issued July 29, 1997, to condition all existing and future U.S.-Mexico code-share authorities to establish a rebuttable presumption in favor of replacing code-share services with direct air carrier services in a given city-pair market.<sup>2</sup> Further, upon reconsideration, we affirm our decision in Order 97-7-31 to defer action on certain portions of the American/Aero California applications.

<sup>1</sup> See Notices Of Action Taken dated November 27, 1996, and April 24, 1997 (and corresponding confirming Orders 96-12-8 and 97-6-26, respectively).

<sup>2</sup> In addition to the subject tentative findings, Order 97-7-31 granted exemption and code-share authorities to American and Aero California for certain U.S.-Mexico code-share operations. The order also directed American and Aero California to revise or delete certain portions of their code-share

## **Background**

By Order 97-7-31 we proposed to condition all existing and future code-share arrangements between U.S. and Mexican carriers to provide a rebuttable presumption in favor of services operated by U.S. carriers with their own aircraft. The effect of such a provision would be to permit replacement of code-share services in a given U.S.-Mexico city-pair market by services of a carrier operating its own aircraft. We had proposed such a condition because designations in U.S.-Mexico city-pair markets are limited, and we concluded that such a condition would best insure the most effective use of the limited available opportunities.

Interested parties were directed to show cause why we should not make final our tentative decision in this matter. Objections to our tentative decision were due August 14, 1997, with answers to the objections due August 19, 1997. American, Aero California, United, Compania Mexicana de Aviacion, S. A. de C. V. (Mexicana), and Northwest filed responsive pleadings.

## **Decision**

We have decided to make final our tentative decision to condition all existing and future U.S.-Mexico code-share operations as proposed, with one modification as indicated below. No party opposed the proposed condition. United, however, suggested that in addition to being imposed on code-share approvals involving U.S. and Mexican carriers, the condition should also be imposed on code-share services involving only U.S. carriers (such as the U.S.-Mexico code-share operations of Northwest Airlines and Alaska Airlines). United stated that such arrangements also affect U.S. carrier designations to the extent that a U.S. carrier must be designated on certain U.S.-Mexico city-pairs in order to hold out service in its own name, even though it is not operating its own aircraft in the market. No party opposed that suggestion and we have decided to adopt it. Therefore, we will apply the following condition to all existing U.S./Mexican carrier and U.S./U.S. carrier code-share operations:

**Authorization of the code-share services may be withdrawn in any U.S.-Mexico city-pair market where another U.S. carrier proposes to operate services with its own aircraft (direct carrier services) and (1) additional designations are not available to authorize the proposed direct carrier service; and (2) the Department determines that the proposed direct-carrier services would provide benefits and service options superior to the code-share operations in the market.**<sup>3</sup>

We will apply the same condition to all future U.S./Mexican carrier and U.S./U.S. carrier code-share operations that are approved for the U.S.-Mexico market.

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agreement relating to code-share coordination committees. (Order 97-7-31, at 8.). Subsequent to the issuance of Order 97-7-31, the Department also granted an American Airlines application (undocketed) for designation to provide small aircraft operations, under a code-share arrangement with Exec Express II, Inc., d/b/a Lone Star Airlines, in the Dallas/Ft. Worth-Torreon and the Dallas/Ft. Worth-Chihuahua markets.

<sup>3</sup> For clarity, we have defined "direct carrier services."

### **Petition for Reconsideration**

In Order 97-7-31 we granted American's and Aero California's applications to the extent that authority was available under the bilateral aviation agreement with Mexico and to the extent that Aero California held the necessary underlying authority and designations from Mexico to operate the proposed services. We deferred action on those portions of the application where such authority was not available or Aero California did not hold authority from its government to operate the requested services.

In their comments to Order 97-7-31, American and Aero California requested that we reconsider our decision to defer action on portions of their applications.<sup>4</sup> United and Mexicana filed a joint answer to the American/Aero California request.<sup>5</sup> In addition, Northwest Airlines, Inc. filed a consolidated reply to American's request and United's answer.<sup>6</sup>

In support of their request, American and Aero California argue that grant of the applications in their entirety (effectiveness in the subject markets to be conditioned on subsequent designation/grant of underlying authority to Aero California), would (1) clarify the Department's intentions with respect to the remainder of the code-share application and facilitate planning by the applicants; and (2) signal to the Mexican aviation authorities that the Department favors expansion of U.S.-Mexico service options through code-share arrangements, which could further bilateral discussions on this issue.

United and Mexicana in their answer note that certain portions of their own earlier-filed joint application for code-share authorities were also deferred; and contend that if the Department decides to grant the relief requested by American and Aero California, the Department should grant the same relief to United and Mexicana with respect to the deferred portions of their code-share applications.

Northwest opposes the requests of American and United to grant the deferred portions of their respective code-share applications. Northwest argues that the Government of Mexico has granted only short-term approvals of its code-share operations with Alaska Airlines, and that until the Government of Mexico is prepared to grant longer term authority to the Northwest/Alaska services, the Department should not authorize code-share operations involving Mexican carriers unless all requisite designations and underlying authority have been secured. Northwest states that the Department should also continue to limit the effective

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<sup>4</sup> For administrative clarity, we will consider that portion of the pleading as a petition for reconsideration of Order 97-7-31.

<sup>5</sup> On August 15, 1997, United and Compania Mexicana de Aviacion, S.A. de C.V. (Mexicana) filed a joint motion, in Docket OST-96-1988 (one of the captioned dockets in this proceeding), for immediate action on the carriers' requests for authority to provide code-share services in the Miami-Cancun market. We will handle this motion by separate order.

<sup>6</sup> Northwest's answer was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

periods for such approvals to 179 days, consistent with Mexican government practice with respect to the Northwest/Alaska code share.

### **Decision**

We have decided to grant the joint petition of American and Aero California for reconsideration of Order 97-7-31 and, upon reconsideration, to affirm our decision in that order to limit our approvals to those markets where authority is available under the U.S.-Mexico aviation agreement and Aero California holds the necessary underlying authority and designation from its government to operate the proposed code-share services.

It has been our longstanding policy to grant authority only in cases where the route rights are available under the bilateral agreement between the United States and the country involved or where we have assurance from the country involved that it is prepared to approve the proposed operations on an extrabilateral basis. Furthermore, because of the limited-entry nature of the U.S.-Mexico market, along with the dormancy provisions attached to all U.S.-Mexico route authority, we have awarded U.S.-Mexico authority only in markets where carriers have firm plans for service. Consistent with these policies, we granted the applications of American and Aero California only in markets where the authority was available under the U.S.-Mexico aviation agreement and where Aero California held the requisite authority and corresponding Mexican Government designation. No party has presented any persuasive reason to deviate from those policies here.

We recognize the interest of U.S. carriers, including American and United, in expanding access to the U.S.-Mexico market through code-sharing arrangements. As we noted in our show-cause order, we have already begun discussions with Mexico regarding code-share services and those discussions are continuing. In the meantime, however, we are not persuaded that the public interest is best served by granting carriers authority that cannot now be exercised.

### **Code-Share Agreement**

By Order 97-7-31, the Department directed American and Aero California to modify provisions of their code-share agreement relating to the powers of the code-share coordination committee. Specifically, we stated that the provisions of Sections 7.2.2. and 7.2.3. of the Codeshare Agreement Between Aero California, S.A. de C.V. and American Airlines, Inc., afforded the committee an unacceptable degree of discretion to make final decisions regarding the scope and nature of the code-share relationship, and we required the parties either to delete the two sections or to revise them in a manner consistent with coordinating committee provisions in agreements previously reviewed by the Department. The joint applicants have submitted amendments to their agreement that eliminate the broad discretionary powers of the code-share coordination committee, consistent with the Department's directive.

**ACCORDINGLY,**

1. We make final, as modified by this order, our tentative findings and conclusions in Order 97-7-31, and condition all currently authorized U.S.-Mexico code-share authorizations between U.S. and Mexican carriers and between U.S. carriers to the following condition:

**Authorization of the code-share services may be withdrawn in any U.S.-Mexico city-pair market where another U.S. carrier proposes to operate services with its own aircraft (direct carrier services) and (1) additional designations are not available to authorize the proposed direct carrier service; and (2) the Department determines that the proposed direct-carrier services would provide benefits and service options superior to the code-share operations in the market;**

2. We grant the joint petition for reconsideration of Order 97-7-31 filed by American Airlines, Inc., and Aero California and, upon reconsideration, affirm our decision to defer action on certain portions of their applications in the captioned docketed and undocketed applications;

3. We may amend, modify, or revoke this order at any time at our discretion without notice or hearing;

4. We grant the motion of Northwest Airlines, Inc., for leave to file an otherwise unauthorized document in the captioned dockets; and

5. We will serve this order on American Airlines, Inc.; Aero California S.A. de C.V.; Aerovias de Mexico, S.A. de C.V.; Alaska Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; Compania Mexicana de Aviacion S.A. de C.V.; the Ambassador of Mexico in Washington, D.C.; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-200).

By:

**CHARLES A. HUNNICUTT**  
**Assistant Secretary for Aviation**  
**and International Affairs**

(SEAL)