



NEW

NOTICE OF ACTION TAKEN

March 20, 1998

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

Joint Applications of DELTA AIR LINES, INC., and AEROVIAS de MEXICO, S.A. de C.V., filed 12/29/97, in Docket OST-97-3289 for:

XX Exemption authority under 49 U.S.C. 40109

XX Statements of Authorizations under Part 207/212 of the Department's regulations to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between various points in the United States and various points in Mexico, under a code-share arrangement between Delta Air Lines, Inc. (Delta), and Aerovias de Mexico, S.A. de C.V. (Aeromexico). On January 16, and February 17, 1998, Delta and Aeromexico filed documents requesting immediate action for approval of the following authorities:

Exemption authority for Delta to serve the following markets: Atlanta-Los Cabos/Mazatlan/Ixtapa-Zihuatanejo/La Paz/Oaxaca/Culiacan/Chihuahua/Hermosillo/Durango/Veracruz; Dallas/Ft. Worth-Los Cabos/Mazatlan/Ixtapa-Zihuatanejo/La Paz/Oaxaca/Culiacan/Chihuahua/Hermosillo/Durango/Veracruz; Los Angeles-Los Cabos/Mazatlan/Ixtapa-Zihuatanejo/La Paz/Oaxaca/Culiacan/Chihuahua/Hermosillo/Durango/Veracruz; New York-Los Cabos/Mazatlan/Ixtapa-Zihuatanejo/La Paz/Oaxaca/Culiacan/Chihuahua/Hermosillo/Durango/Veracruz.

Statement of Authorization for Aeromexico under Part 212 to display Delta's airline designator code on flights operated by Aeromexico between Mexico City and Los Cabos, Mazatlan, Ixtapa/Zihuatanejo, La Paz, Oaxaca, Culiacan, Chihuahua, Hermosillo, Durango, and Veracruz for the carriage of Delta's U.S.-Mexico traffic described above.

Exemption authority for Aeromexico to serve between Mexico City and the coterminal points Charlotte, Raleigh/Durham, Greensboro, Greenville, Knoxville, and Birmingham (via Atlanta); between Mexico City and the coterminal points Colorado Springs, Denver, Memphis, Nashville, Reno, Salt Lake City, Cincinnati, Portland, and Seattle (via Dallas/Ft. Worth); and between Mexico City and Portland (via Los Angeles).

Statement of Authorization for Delta under Part 207 to display Aeromexico's airline designator code on flights operated by Delta: between Atlanta and the coterminal points Charlotte, Raleigh/Durham, Greensboro, Greenville, Knoxville, and Birmingham; between Dallas/Ft. Worth and the coterminal points Colorado Springs, Denver, Memphis, Nashville, Reno, Salt Lake City, Cincinnati, Portland, and Seattle; and between Los Angeles and Portland for the carriage of Aeromexico's Mexico-U.S. traffic described above.

Applicant reps: Robert E. Cohn for Delta (202) 663-8060 DOT Analyst: Linda Lundell (202) 366-2336
William C. Evans for Aeromexico (202)371-6030 Allen Brown (202)366-2405

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DISPOSITION

XX Granted , In Part, Carriers' Requests of January 16, and February 17, 1998, for the operating authority described (See Attachment).

XX As to those requests granted, dismissed carriers' request for longer term authority.

XX Balance of application deferred.

The above action was effective when taken: 3/20/98 . The exemption authority will expire 3/20/99 , or 90 days after final Department action on a corresponding certificate application, whichever occurs earlier. The statement of authorization authority will expire 6/14/98.

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 Exemption authority granted is consistent with the aviation agreement between the United States and Mexico. The code-share authority granted is consistent with the overall state of aviation relations with 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 (for Delta)

XX Holder's foreign air carrier permit (for Aeromexico)

XX Standard Exemption Conditions (attached)

Special Conditions/Remarks: **The U.S.-Mexico exemption authority granted to Delta is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2.**

In the interest of administrative efficiency, and consistent with our standard practice regarding U.S.-Mexico code-share authorities, the code-share authorities granted here have been awarded coextensive with the duration of the code-share authorities already held by the carriers for other U.S.-Mexico code-share services. (See Statements of Authorization granted December 18, 1997 to Delta and Aeromexico, as well as to United Air Lines and American Airlines and their respective code-share partners). We have dismissed the balance of the requests for those authorities granted insofar as the requests sought longer-term authority. Because the authority granted here is for a period of less than 180 days, APA rights will not apply. The dismissal is without prejudice to the carriers filing for extension of the authorizations at the appropriate time.

The code-share operations authorized here are subject to the condition that they comply with the provisions of Section 399.88 of the Department's regulations regarding code-sharing operations and any amendments to those regulations that may be adopted by the Department, and the further condition that the foreign air transportation be sold in the name of the carrier holding out service in computer reservation systems and elsewhere, that the carrier selling such transportation accept all obligations established in the contract of carriage with the passenger (i.e., the ticket), and that where applicable the operator shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose air space the Federal Aviation Administration has issued a flight prohibition.

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.

Answers to the Delta/Aeromexico application were filed by American and AeroCalifornia (jointly), Continental, and United Air Lines. Delta and Aeromexico filed a joint reply.

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American and AeroCalifornia stated that they retained their view that the Department should encourage Mexico to liberalize the availability of code-share authority, and that the Department should make clear that by awarding the limited requests of each of the alliances on an incremental basis, it is not adopting the Mexican views on this matter. We will, in this regard, continue to work with the Mexican authorities on liberalization of the code-share regime for U.S.-Mexico services. In the meantime, however, awards of code-share authorizations have historically been granted on the basis of comity and reciprocity and we believe that it is in the public interest to follow that practice, on a limited basis, while this process continues. The fact that we have chosen this course of action with Mexico reflects our judgment at this time that such action will best promote our efforts to reach a satisfactory long-term solution to the code-sharing issues in the U.S. Mexico market.

Continental opposed the Delta/Aeromexico application to the extent it seeks Houston/New York-Mexico authority, arguing that grant of code-share authority in these markets may preclude or delay new direct-carrier service by Continental in these markets. Delta's January 16 and February 17 documents, requesting discrete city-pair markets, do not include requests for any Houston-Mexico markets. Therefore, that portion of Delta's application remains pending and we do not reach here the issue raised by Continental. With respect to the New York-Mexico markets, we have granted Delta certain authority (see last page). In each one of these markets, however, one U.S. carrier designation remains available, so nothing in our action forecloses the introduction of service by an additional U.S. carrier.

United argued that the Department must defer action on the Delta/Aeromexico requests to the extent that there are an insufficient number of designations available to satisfy all of the alliances seeking authorizations. Delta and Aeromexico maintained that the majority of the city-pair markets included in their application do not raise carrier selection issues and, thus, objected to United's request for deferral on their application. To the extent that there are insufficient Mexican carrier designations for services in certain markets, Delta and Aeromexico stated that it is up to the Government of Mexico, not the Department, to decide which Mexican-flag carriers should receive the limited designations for Mexico-U.S. routes.

Consistent with our standard practice with respect to U.S. carrier applications for Mexico, we have deferred action to the extent that Delta's exemption application to serve U.S.-Mexico markets is mutually exclusive with those of other U.S. carriers. Consistent with our standard practice with respect to Mexican carrier exemption applications, we have granted authorizations to the extent that the carrier held the necessary underlying authority and designation from Mexico to conduct the proposed services. To the extent such authority and designations were held, we granted the U.S. carrier code-share partner the necessary statement of authorization to engage in the code-share operations proposed (see Order 97-7-31). Pursuant to the previously described standard practices, we deferred action on Delta's request for exemption authority and Aeromexico's request for a statement of authorization to serve the following markets: Dallas/Ft. Worth-Los Cabos/Mazatlan/ Chihuahua/Hermosillo/Durango; Los Angeles-Los Cabos/Mazatlan/Ixtapa-Zihuatanejo/Hermosillo/Durango; New York-Los Cobos/Mazatlan/Ixtapa-Zihuatanejo/Hermosillo/Durango.¹

We note that United had also objected to the Delta/Aeromexico application with respect to the Dallas/Ft. Worth/Los Angeles/New York-Veracruz/Oaxaca markets. In December 1997, the U.S. and Mexico agreed that all U.S.-Mexico markets would be available for double-designation. No carriers are currently authorized in these markets. Therefore, the Delta/Aeromexico and United/Mexicana applications to serve these markets are not mutually exclusive, and, thus, there was no basis to withhold the authority requested by Delta/Aeromexico in its January 16 and February 17, 1998, requests.²

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¹ Although in its response dated March 4, 1998, Delta stated that there is only one competing request for certain New York-Mexico markets, in fact, there are two competing requests--from United (Docket OST-97-3237) and American (Docket OST-97-2477).

² United has also requested code-share authority for the New York-Veracruz/Oaxaca markets (Docket OST-97-3237). However, United's January 8 document, in Docket OST-97-3237, requesting action on specific city-pair markets, did not include requests for the New York-Veracruz/Oaxaca markets. Therefore, that portion of United's application remains pending.

AUTHORITY GRANTED ORALLY

Exemption authority for Delta to serve the following markets: Atlanta-Los Cabos/Mazatlan/Ixtapa-Zihuatanejo/La Paz/Oaxaca/Culiacan/Chihuahua/Hemosillo/Durango/Veracruz; Dallas/Ft. Worth-Ixtapa-Zihuatanejo/La Paz/Oaxaca/Culiacan/Veracruz; Los Angeles-La Paz/Oaxaca/Culiacan/Chihuahua/Veracruz; and New York-La Paz/Oaxaca/Culiacan/Chihuahua/Veracruz.

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