



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

UNDOCKETED

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: CONDOR FLUGDIENST GmbH (CONDOR)

Date filed: March 9, 1998

Relief requested: Statement of Authorization under 14 CFR Part 212 to permit Condor to carry Mexicana's code between Tampa, Florida, and the Mexican coterminal points Acapulco and Puerto Vallarta, on certain of Condor's scheduled services to and from Frankfurt, Germany, for a period of one year.

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

Applicant representative(s): Anita M. Mosner and Howard E. Kass, 202-342-6794

Responsive pleadings: On March 17, 1998, the Hillsborough County Aviation Authority filed an answer supporting Condor's application, asserting that there is a need for additional Tampa-Mexico services and that there is adequate reciprocity with Mexico in the area of code-sharing to warrant favorable action on Condor's request.

On March 18, 1998, American Airlines filed an answer opposing the application. American urged us not to authorize a carrier of Mexico to expand its U.S. code-share services with third-country carriers, under circumstances where the United States and Mexico do not have an acceptable bilateral arrangement for code-share operations. Moreover, American asserted that the parent of Aeromexico and Mexicana (the Cintra Group) is the main impediment to U.S. authorities' reaching an acceptable arrangement on codesharing with Mexican authorities.

By letter dated March 23, 1998, Condor responded to American's pleading, urging us to grant its request. In this connection, Condor asserts its belief that the United States' current aviation relationship with Mexico is positive enough to warrant grant of this limited code-share request, and that there is a public need for this Tampa-Mexico operation.

On March 24, 1998, the Hillsborough County Aviation Authority filed an additional pleading in this matter, again urging us to grant Condor's application. In its second pleading Hillsborough County restates assertions that it made in its answer of March 17, 1998, and also claims that unfavorable action in this case would not help achieve American Airlines' goal of an acceptable U.S.-Mexico code-share arrangement.

DISPOSITION

Action: Granted through August 23, 1998; remainder dismissed.

Action date: April 2, 1998

Effective date of authority granted: April 2, 1998, through August 23, 1998.

Basis for approval: We determined that in light of our open-skies relationship with Germany and our overall positive aviation relationship with Mexico, it would be consistent with the public interest to grant Condor's request. We also note that on February 25, 1998, we granted an analogous, albeit unopposed, request by Aeromexico to carry Swissair's code in the Cancun-Atlanta market, for Swissair's scheduled services to and from Switzerland, for a period of 179 days, which is through August 23, 1998, and that, on March 27, 1998, we granted Aeromexico's request to carry Austrian Airlines' code between Mexico City and New York, on certain of Austrian's scheduled services to/from Austria, but only through August 23, 1998, rather than the one-year requested duration.

As we noted in the Aeromexico-Austrian case (above), while we are actively pursuing a liberal code-sharing arrangement with Mexico that would include code-share opportunities for carriers of both countries with third-country airlines, to date we have not reached a satisfactory accord with Mexico on this issue. Against that background, we limited the duration of the Aeromexico/Austrian Airlines authority to August 23, 1998, and we similarly have limited Condor's request to code-share with Mexicana to August 23, 1998.

Furthermore, again pursuing the same approach as in the Aeromexico-Austrian case, we put Mexicana and its code-share partner on notice that, should we not be able to reach an acceptable code-share arrangement with Mexican authorities by the expiration date of these authorities, they should not anticipate extension of their extant code-share authorization for U.S. operations with third-country carriers.

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

Special conditions/Partial grant/Denial basis/Remarks: These code-share operations must comply with 14 CFR 399.88 of the Department's rules and the further conditions that this foreign air transportation be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere, and that the carrier selling such transportation accept all obligations established in its contract of carriage with the passenger (that is, the ticket).

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.)