



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

Issued by the Department of Transportation
on the 20th day of May, 1998

**AMERICAN AIRLINES, INC., et al.,
and THE TACA GROUP RECIPROCAL CODE-
SHARE SERVICES PROCEEDING**

Docket OST-96-1700

FINAL ORDER

Summary

By this Order, we grant final approval for the various applications of American Airlines, Inc. ("American") and Aviateca S.A. ("Aviateca"), Compañía Panameña de Aviación S.A. ("COPA"), Líneas Aéreas Costarricenses S.A. ("LACSA"), Nicaraguense de Aviación S.A. ("NICA"), TACA International Airlines S.A. ("TACA"), and TACA de Honduras S.A. (each individually a "TACA Group Affiliate Air Carrier," and hereafter collectively referred to as "the TACA Group") to the extent necessary to permit them to conduct reciprocal code-share services operated by these carriers for a period of two years, subject to conditions.

Subject to the conditions and limitations specified below, our action here will advance important public policy and consumer benefits. Our actions will permit the applicants to operate more efficiently and provide the U.S. traveling and shipping public with expanded networks and seamless service in the U.S.-Central America market. Moreover, with our proposed conditional approval to these U.S.-Central America markets, our action will be consistent with our open-skies negotiating policy and with our policy of facilitating code-share networks, where those networks point the way potentially to lower costs and enhanced service for U.S. and international consumers.

Background

On May 8, 1997, the Governments of the United States and Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Republic of Panama separately reached agreement with the United States on new open-skies aviation relationships. A predicate for our conditioned approval for the American-TACA Group alliance is the existence of the expansive, new aviation agreements between the United States and these several governments. These new accords allow any U.S. airline to serve between any point in the United States and a point or points in these six Central American countries (with open

behind, intermediate, and beyond traffic rights) and provide similar rights to any airline from those countries.

The open-skies accords include, among other things, provisions for cooperative arrangements, such as code-sharing, wet-leasing, and blocked-space or leasing arrangements for the airlines designated by either country, subject to the laws of each country. As previous open-skies accords have demonstrated, open-skies aviation should encourage increased consumer benefits and should provide increased competitive opportunity in the U.S.-Central America marketplace. The open-skies aviation regime should allow the price and quality of U.S.-Central America airline service to be disciplined by market forces, instead of restrictive agreements. Therefore, U.S. consumers should benefit from enhanced passenger and shipper options.

Applications

The TACA Group carriers filed separate applications for exemptions authorizing each of these carriers to serve additional points in the United States, Canada, Europe, and Japan.¹ American Airlines, Inc. (“American”), its regional affiliates,² and the TACA Group filed a joint application for statements of authorization to engage in certain reciprocal code-sharing services.³ These applications were filed under 49 U.S.C. § 40109 and 14 C.F.R. Parts 207 and 212.

Show-Cause Order

On December 31, 1997, the Department issued a Show-Cause Order, Order 97-12-35. We tentatively determined, subject to certain conditions and limitations, to grant the applicants’ requests to the extent necessary to permit them to engage in reciprocal code-sharing services. We tentatively decided to grant these authorizations for a two-year period, subject to review. The Department stated that it was not proposing to authorize the applicants to operate under a common name.

We also tentatively decided to condition our authority in certain respects. We required that the applicants (1) eliminate provisions in the Agreement relating to the establishment and implementation of the Joint Alliance Committee; (2) employ a fixed blocked-space arrangement only with respect to the eight major Miami-Central America overlap markets; (3) eliminate any exclusivity provisions of the Agreement(s); (4) maintain separate pricing,

¹ The TACA Group carriers state that they will use this additional authority to implement a proposed code-sharing arrangement with American Airlines, Inc.

² Executive Airlines, Inc., Flagship Airlines, Inc., Simmons Airlines, Inc., and Wings West Airlines, Inc.

³ American also applied for an exemption to allow it to integrate its certificate authority to serve points in Central America and the Caribbean (Route 137), South America (Route 389), and Mexico (Route 560).

inventory control and yield management, to be managed, marketed and sold independently by each partner, with respect to local U.S. point-of-sale passengers flying nonstop between Miami and the eight Central America overlap markets; (5) not coordinate or provide more information to the other partners concerning fares or seat availability than it makes available to airlines and travel agents generally; (6) establish fares independently in each of the markets covered by the Agreement(s); and (7) submit any subsequent agreement(s) for the Department's review and prior approval.

We tentatively decided to direct the TACA Group carriers to report full-itinerary Origin-Destination Survey of Airline Passenger Traffic (O&D Survey) data for all passengers to and from the United States (similar to the O&D Survey data reported by American).⁴ Further, we specified certain criteria to be used upon review of this action. We further stated that we would closely monitor the competitive environment in the affected markets, and that we intend to monitor this matter fully on an ongoing basis over the next 24 months, to determine whether our actions continue to be appropriate and in the best interests of consumers.

We also provided the applicants and any interested parties an opportunity to comment on our tentative findings and conclusions.

Responsive Pleadings to Order to Show Cause

On January 28, 1998, American Airlines, Inc. ("American"), Continental Air Lines, Inc. ("Continental"), the Dallas/Ft. Worth International Airport ("DFW Airport"), Delta Air Lines, Inc. ("Delta"), the TACA Group, United Air Lines, Inc. (United"), and the United States Department of Justice ("DOJ") filed comments/objections.

American Air Lines

American states that the Department should vacate the proposed fixed blocked-space condition in the Miami-Central America markets,⁵ and, as so amended, promptly finalize its approval of the American-TACA Group arrangement. American argues that the proposed condition is contrary to the terms of the open-skies agreements between the United States and the foreign applicants' homeland governments. American also asserts that the imposition by the Department of a blocked-space condition (requiring fixed seats and prices) in the Miami-Central America markets is less beneficial to consumers, less efficient in the affected marketplace, and less competitive than the "free sale of seats against inventory" as proposed by the Applicants. American maintains that the proposed blocked-space condition has not been imposed in other code-share cases, and that there is no policy basis for doing so here.

⁴ This provision will take effect in the first full quarter following the service date of this order.

⁵ Order 97-12-35, ordering paragraph 1.(c).

Continental Air Lines

Continental urges the Department to deny or dismiss the proposed arrangement contending that it is “anticompetitive” and “anticonsumer,” or, alternatively, impose additional conditions to insure competition in the “U.S.-Latin America” region. Continental asserts that neither open skies nor the conditions proposed by the Department are sufficient to guarantee effective competition by other U.S. carriers and to prevent the Applicants from reducing service options for consumers.

Continental reiterates its concerns that the Department did not assess the cumulative “anticompetitive” effects of American’s proposed “Latin American Alliances.” Consequently, Continental maintains that the Department’s tentative decision is arbitrary, capricious and contrary to the Department’s policies.

Continental maintains that the Department should impose certain more restrictive conditions that would prevent the Applicants from exploiting “fully synergies or economies of scale gained through code sharing, coordination and integration.” Continental urges the Department to require the TACA Group to implement an equivalent code-share relationship with a competing U.S. carrier before granting the requested authority.⁶ Moreover, Continental states that the Department should require the TACA Group to report on their “receipt of and response to” solicitations from competing U.S. carriers to enter into code-share arrangements with the TACA Group, and be required to explain the reasons for any rejection(s). While agreeing that the blocked-space condition is important, Continental asserts that the condition should be expanded to apply to all American-TACA Group code sharing on all routes. Regarding the blocked-space condition, Continental urges the Department to (1) prohibit the Applicants “from selling into the other partner’s block”; (2) prohibit the Applicants from “exchanging unused seats for refunds”; and (3) require the Applicants “to sell their blocks to one another at a reasonable price, and that price cannot be significantly different from prices offered to other carriers, including Continental.”

Finally, Continental maintains that the Department’s tentative award of beyond-Mexico code-share authority to American without a carrier selection proceeding violates the *Ashbacker* doctrine.⁷

DFW International Airport

DFW Airport urges the Department to finalize its proposed decision to the extent necessary to allow the Applicants to commence reciprocal code-share services immediately on the “non-controversial” Dallas/Ft. Worth-Central America routes.

⁶ Objections at 19.

⁷ *Ashbacker Radio Corporation v. FCC*, 326 U.S. 327 (1945). Objections at 22-23.

Delta Air Lines

Delta urges the Department to deny the applications, or, alternatively, impose additional limitations and restrictions.⁸ Delta maintains that the Department's tentative decision does not adequately remedy the "adverse competitive consequences" of the proposed arrangement. Delta argues that the degree of dominance held by American at its Miami hub makes this gateway "unique and distinguishable from the competitive situation in the United States or in other international regions." Delta asserts that the competitive situation at Miami is such that no alternative U.S. hubs exist that would provide "an effective disciplining mechanism to American-TACA."

Delta says that the elimination of the exclusivity clause will produce no equivalent alternative code-share arrangements; and that elimination of the Joint Alliance Committee will not "transform" the arrangement into a "garden-variety" code-share agreement, since Delta perceives no public benefits promoted by the proposed alliance.

If the Department resolves to finalize its tentative decision, Delta urges the Department to impose additional conditions to further mitigate various competitive concerns. Delta states that the Department should (1) require the TACA Group to enter into an equivalent code-share arrangement with another U.S. carrier, on comparable terms as American, and prior to implementing the American code-share arrangement; (2) prohibit the Applicants from conducting discussions or holding meetings involving functions identified in § 8 of the agreement (the Joint Alliance Committee); (3) require each of the Applicants to file "certifications" under oath attesting that they have not participated in any prohibited activities; (4) conduct periodic audits of the Applicants activities; (5) require that all alliance agreements be filed in the docket for review and comment by interested parties; and (6) require renewal of the arrangement after one year.

The TACA Group

The TACA Group urges the Department to finalize approval of its requested authorities, while lengthening the duration of approval from two years to five years and eliminating the "fixed blocked-space" condition in the Miami-Central America markets. The TACA Group argues that the proposed two-year term of approval is too limited to permit the Department to conduct a balanced evaluation of the alliance. The TACA Group says that a five-year grant of approval is more appropriate and consistent with Department precedent. It also asserts that the proposed requirement of a fixed blocked-space condition is too restrictive in view of recent competitive developments in the "affected markets."

⁸ Concurrently, Delta filed a motion for confidential treatment under 14 C.F.R. § 302.39, consistent with the Department's prior confidentiality determinations (*see* Notice dated March 13, 1997). We will grant the motion.

United Air Lines

United urges the Department to reverse its tentative decision allowing the Applicants to offer code-share services to, from, and through Miami. United says that the tentative conditions proposed by the Department will not advance competition in the affected Miami-Central America market.

United argues that Miami's "unique" position in the U.S.-Central America marketplace requires that it be dealt with differently from other U.S. gateways. United maintains that Miami's geographical, commercial, and cultural advantages are such that other U.S. international hubs cannot provide competition as alternate gateways to Central America. Moreover, United asserts that there is no factual basis for concluding that any of the other U.S. airlines serving the U.S.-Central America market can offer a competitive alternative to American in Miami-Central America markets.

United argues that eliminating contractual exclusivity will not create meaningful competition at Miami. United says that the TACA Group does not need other code-share partners at Miami given American's competitive position in the "U.S.-North" markets, and that the best any alternative U.S. partner could achieve is a position as a "niche" carrier to Central America from another hub. United contends that the only way it can "improve its position in Miami and Latin America is by cooperating with foreign carriers that serve those markets so that they can join forces in competition with American."⁹

While recognizing that the proposed blocked-space condition promotes competition, United asserts that it will not have the positive competitive effect intended by the Department given the unique circumstances of the Miami-Central America markets. United says that the applicants face no other competitors at Miami. In these circumstances, any increased cost from unsold blocked space will merely be passed on to the public by the applicants in the form of higher fares.

Finally, United urges the Department to encourage the TACA Group to form alliances with other U.S. airlines to challenge American's dominance at Miami. United claims that an alliance between itself and the TACA Group "would create an additional competitive choice for Miami-Central America consumers and would enhance competition between the TACA carriers and United, on the one hand, and American, on the other."¹⁰

⁹ Objections at 14.

¹⁰ Objections at 23.

U.S. Department of Justice

DOJ's position is that the Department should "give little weight to the parties proffered efficiencies and resulting claims of expanded networks and seamless service in the U.S.-Central America market."¹¹ According to the DOJ, the claimed benefits are very slight, yet the agreement presents risks to competition that should be carefully weighed in analyzing the public interest. Moreover, the DOJ states its view that the Department "cannot entirely eliminate the risks to competition with any conditions," and that the arrangement "does not offer significant pro-competitive efficiencies."¹² The DOJ "takes no position on the weight that the Department should give to open skies achieved as a precondition to its consideration of the current code-share application (or on whether open skies could be achieved without approval of this specific agreement)."¹³

Answers to Responsive Pleadings

On February 6, 1998, American, Continental, DFW Airport, Delta, the City of Houston ("the City"), the Regional Business Partnership ("Newark"), and the TACA Group filed answers/replies.

American Airlines

American states that the Department should finalize its proposed decision without imposing the blocked-space condition. American says that Continental, Delta, and United ignore the fact that each is offering substantial new U.S.-Central America services under the same open-skies agreements that justify approval of the American-TACA Group application.

American notes that Continental has introduced substantial increases in U.S.-Central America service from its Houston and Newark hubs and from Los Angeles.¹⁴ American argues that Continental's request for consolidation of American's proposed code-share arrangements is impractical. American states that if the Department were to proceed as Continental suggests, no case under consideration by the Department would proceed in a timely or expeditious manner -- given the dynamic nature of international code-share alliances.

¹¹ DOJ Comment at 2.

¹² DOJ Comment at 11.

¹³ DOJ Comment at 2.

¹⁴ American's Exhibit 1 shows that Continental will operate the same number of flights in the U.S.-Central America market as American, effective June 1998.

American argues that if the Department accepts Continental's suggestion to require that an "equivalent" alliance with the TACA Group be "in place" before approval of this arrangement, competing U.S. carriers would effectively have "veto power" over the American-TACA Group alliance. Finally, American states that the Department should not incorporate Continental's urging to extend the proposed blocked-space condition to all of the American-TACA Group code-share markets. Regarding the proposed blocked-space condition, American restates its prior arguments against the conditions.

American notes that Delta has announced its intention to commence new operations into four Central America markets in April 1998.¹⁵ Contrary to the opponent's arguments, American states that the traveling public will benefit "substantially" from the proposed arrangement, with expanded networks, seamless connections, and a broader choice of service and fare options. American says that none of the "additional conditions" proposed by Delta should be placed on the American-TACA Group code-share arrangement, since "no such conditions have been imposed on other codeshares."

American asserts that the basis for United's opposition to the proposed alliance is that it "continues to seek regulatory intervention in order to shield itself from the consequences of its own decision not to build a Miami hub, and to abandon its own once-extensive services" in the Miami-Central America market. American also states that certain exhibits offered by United to show competition in the U.S.-Central America market are "incomplete" and "misleading." American says that they do not include any of the various new services that are being introduced by Continental, Delta, or United in the affected markets.

American maintains that the DOJ, while expressing "concern," does not object to approval of the American-TACA Group code-share arrangement. American says that DOJ's comments appear to treat the American-TACA Group application as an antitrust immunity request rather than approval of a "simple codeshare arrangement." American disagrees with DOJ's assessment that the arrangement will not offer procompetitive efficiencies.¹⁶

Finally, American says that the U.S.-Central America open-skies agreements establish the basis for approval of the proposed alliance; that these agreements have removed all entry barriers between the United States and the six Central America countries; and that the agreements explicitly authorize code-sharing arrangements between any designated airlines of the two sides.

¹⁵ On February 9, 1998, Delta announced that it will begin daily, nonstop flights in the Atlanta-Guatemala City/Panama City/San Jose/San Salvador markets beginning April 5, 1998.

¹⁶ For example, the arrangement will provide American with new or improved access at Los Angeles and San Francisco, and from Dallas/Ft. Worth, as well as from other TACA gateways such as Washington, D.C. (Dulles), New York, New Orleans, Orlando, and Houston. Contrary to DOJ's assessment, American states that, as shown by June 1997 schedules, 46 percent of the TACA Group's U.S.-Central America flights operated into gateways other than Miami. Answer at 24.

Continental Air Lines

Continental states that the DOJ, Delta and United agree that the proposed alliance is anticompetitive and should be denied. Continental restates its view that if the Department determines to finalize its tentative decision, the Department must “put more restrictions on the approval than originally proposed.” Continental concurs with Delta’s recommendation to require the TACA Group to enter into a code-share arrangement with another U.S. airline before the TACA Group is allowed to implement the American arrangement.

Continental urges the Department to “strengthen” the proposed blocked-space condition. The airline recommends (1) extending it to the American-TACA Group code-share service at all affected U.S. gateways, (2) prohibiting each partner from selling into the other’s block, (3) prohibiting return provisions that would permit American and the TACA Group from exchanging unused seats for refunds or credits, and (4) require the Applicants to sell their blocks to each other “at fair market value.” Continental argues that these added conditions will ensure that the Applicants retain some independent financial risk.

DFW Airport

The Airport again asks that the Department grant immediate approval to the Applicants’ request to the extent that they can begin code sharing on the DFW routes, if conditions on Miami code-sharing require further review.

Delta Air Lines

Delta urges the Department to deny the Joint Application. Delta says that if the proposed alliance is disapproved, Delta is positioned to develop an “arrangement” with the TACA Group. Delta discusses the proconsumer and procompetitive benefits that could be established by a Delta-TACA Group relationship in the U.S.-Central America market.

The City of Houston

The City asks the Department to reconsider its proposed decision. The City maintains that the only “beneficiaries” of the alliance will be American, the TACA Group, and the City of Miami. Importantly, the City states that finalizing the proposed decision will “constrain the development of the City’s economy while restricting the range and increasing the price of service options available to passengers and shippers.” The City argues that if the proposed decision is finalized, then the City encourages the Department to augment its proposed conditions as suggested by Continental.

Newark

Newark urges the Department to deny the proposed application. Newark views the proposed alliance as “bad” for Newark and other U.S. hub gateways competing with American’s U.S.-Central America hub gateways.

The TACA Group

The TACA Group says that denial/dismissal of the proposed arrangement would violate U.S. policy objectives and international obligations, and “betray the expectations of other nations.” The TACA Group states that Continental, Delta, and United are now benefiting from the six new open-skies agreements by substantially expanding their nonstop service to Central America from existing and new U.S. gateways.

The TACA Group maintains that it needs the proposed arrangement with American in order to compete with other U.S. airlines and American for passengers traveling to, from, and beyond-gateway points in the U.S. The TACA Group says that rejection of its application would prevent it from “meaningfully” accessing beyond U.S. gateway points and from obtaining the additional feed traffic at Miami that it needs to maintain a competitive position even in the international gateway to gateway markets.

Finally, the TACA Group views the various additional conditions recommended by its opponents in this case as an impediment to implementation of the proposed arrangement with American, and “flatly inconsistent with the free market philosophy of open skies.”¹⁷

Further Pleadings

On February 9 and 13, 1998, United filed a consolidated answer and reply, respectively, and motions for leave to file late.¹⁸ We will grant the motions. United restates its position that the Department should deny the applicants’ request to code share to, from and via Miami, while recognizing that “there may well be benefits from code-share services via other gateways that would be sufficient to warrant approval.”

On February 25, 1998, Continental filed a consolidated response and a motion for leave to file an otherwise unauthorized document. We will grant the motion. Continental urges the Department to reject United’s view that the American-TACA Group alliance might warrant approval, if code sharing by the applicants was denied at Miami.

Decision

A. Public Interest Discussion

We make final, subject to conditions, our tentative findings to approve the code-sharing arrangement proposed by American and the TACA Group carriers. The authority will be

¹⁷ The TACA Group states that it would entertain a code-share proposal from any U.S. partner, as long as it provides meaningful benefits to the TACA Group. Consolidated Reply at 17.

¹⁸ On February 17, 1998, United filed Exhibit UA-601 which it states was inadvertently omitted from and supplements its reply of February 13.

effective from the date of service of this order for a period of two years. In these circumstances, after careful balancing of the public policy issues involved, we find that the proposed cooperative arrangement under consideration here is in the public interest. After weighing the arguments in the responsive pleadings, we are not convinced that the balance requires a different result.

The regulatory provisions applicable to our decision, 49 U.S.C. § 40109 and 14 C.F.R. §§ 207.10 and 212.6, all require a finding that the authority is in the public interest. We must weigh and balance the applicable factors in each case to determine whether the public interest supports approval or denial.¹⁹ In determining the public interest, we consider a number of factors, including the extent to which the authority sought is covered by and consistent with the bilateral agreements to which the United States is a party, promotion of U.S. international air transportation policy, and the benefits that will accrue to U.S. carriers, passengers, and shippers under the proposed arrangement, as well as the potential disadvantages of a particular arrangement. 49 U.S.C. § 40105 directs us to carry out our responsibilities consistent with the obligations of the United States under an international agreement.

We have already found (Order 97-12-35) that the two authorities under consideration are permitted, provided that they meet the requirements normally applied to such agreements in the May 8, 1997, open-skies agreements between the United States and the TACA Group carriers' homeland governments. Furthermore, approval of these applications could enable the applicants to provide enhanced service opportunities to travelers and shippers.

For example, the record indicates that American intends to commence new code-share services on TACA Group operated flights in the Los Angeles-San Jose/Guatemala City/San Salvador markets, and the San Francisco-Guatemala City/San Salvador markets. The addition of American's code to these existing TACA Group flights will offer new single carrier services to consumers and increase competition in the U.S.-Central America market. The record also indicates that the proposed arrangement will allow the Joint Applicants to establish new code-share operations to Washington, DC (Dulles Airport), New York (JFK Airport), New Orleans, Orlando, and Houston.²⁰ These are brand new services not previously available to consumers. The synergies generated by these code-share arrangements have made these services possible and they will enhance competition in the U.S.-Central America market.

The Department has previously stated that, in general, code sharing and other cooperative marketing arrangements can provide a cost-efficient way for carriers to lower costs, increase efficiency, and expand their systems and obtain additional flow traffic to support their other operations by using existing facilities and scheduled operations. These

¹⁹ Order 88-3-38 at 6.

²⁰ See American's Reply of June 11, 1997, at 12-13.

cooperative arrangements can give the airline partners new or additional access to more markets and stimulate new traffic. Increased international code sharing can also benefit consumers by increasing international service options and enhancing competition between carriers.²¹

For example, in December 1997, the TACA Group started daily, nonstop service between Dallas/Ft. Worth and Guatemala City/San Salvador. On April 20, the TACA Group started daily, nonstop service between New York (JFK Airport) and Guatemala City/San Salvador, and between Washington D.C. (Dulles Airport) and San Salvador. As indicated above, these brand new services are made possible in the authority granted here and code sharing will compete with services offered by other carriers at these and competing gateways. Finally, later this year, the TACA Group has announced that it will launch business-class service in the U.S.-Central America market. This service enhancement will be the result of the code-share arrangements authorized here.

The Department has recognized that airlines will develop varying service products, among them code sharing, to respond to the preferences of the traveling public. For this reason, the Department has determined, to the greatest extent possible, that airlines should be free to set prices and offer various service products in response to passenger preferences; and that the Department should provide our carriers with the flexible rights and economic environment that will enable them to respond to the dynamics of the marketplace. Overall, the Department has stated that, generally speaking, code sharing should expand the level and quality of international air service for consumers.²²

While the Department expects that the expansion of cooperative arrangements will be largely beneficial, it is also concerned, as in this case, that there may be negative effects. For this reason, we have noted that a predicate for our conditioned approval of this proposed arrangement is the existence of the expansive, new open-skies aviation agreements between the United States and the foreign applicants' homeland governments. In addition, we have conditioned or modified the arrangements to limit the negative effects on competition. We determined that, while these bilateral agreements do not guarantee an expansion of competition in the affected marketplace, our open-skies initiative is critical to establish an aviation environment that maximizes the potential opportunity for an increased competitive presence by other U.S. airlines.²³

B. Competition in the U.S.-Central America Market

²¹ Order 93-1-11 at 11.

²² See U.S. International Aviation Policy Statement, 60 FR 21841, dated May 3, 1995.

²³ Continental, Delta, and United have each expanded their services in the U.S.-Central America market. These initiatives will be discussed later in this order.

As an initial matter, each of the opposing parties has expressed concerns that the Department's proposed actions in this matter will effectively foreclose competition in the U.S.-Central America market in general and the Miami-Central America market in particular. Moreover, it has been suggested by the opposing parties that the new Open-Skies Agreements achieved by the United States and the six Central America Governments last year will have little impact on competition in the region. Despite these views, recently, the Department has observed the introduction of new and expanded services between Atlanta, Chicago, Los Angeles, Newark and numerous points in Central America. These new nonstop initiatives will indeed promote continued vigorous competition in the overall U.S.-Central America market. These latest competitive developments bode well for increased travel and pricing options available to passengers and the shipping public, and enhanced commercial and business opportunities for competing U.S. carriers in the region.

Importantly, we now see an impressive array of new and expanded U.S.-Central America services being introduced by Continental, Delta, and United. We fully expect these new operations to enhance competition in the U.S.-Central America market. Indeed, this is precisely the type of competitive stimulation that we envisioned and promoted by negotiating the U.S.-Costa Rica/El Salvador/Guatemala/Honduras/Nicaragua/Panama Open-Skies Agreements. Despite the large market share held by the applicant partners in the U.S.-Central America market, we see no barriers to entry for competing U.S. airlines, except at Miami. For this reason, we have imposed specific conditions on the Joint Applicants' cooperation and operations in the Miami-Central America market to address the anti-competitive concerns discussed by the Department and the opposing parties in this case.

On April 5, 1998, Delta commenced daily, round-trip, nonstop flights between Atlanta, Georgia, and Panama City, Panama; Guatemala City, Guatemala; San Salvador, El Salvador; and San Jose, Costa Rica. Significantly, these new operations represent Delta's first venture into Central America.

Continental has announced that it intends to commence (subject to Costa Rican government approval) daily, round-trip, nonstop flights between Newark, New Jersey, and San Jose, Costa Rica, on or about July 7, 1998.²⁴

On April 5, 1998, United commenced daily, round-trip, nonstop flights between Chicago and Guatemala City. United has stated that this service is the first to Central America from its O'Hare International Airport hub and that "more than 24,000 travelers flew between Chicago and Guatemala in the first nine months of 1997. By linking Guatemala with our largest hub, we anticipate considerable traffic on both northbound and

²⁴ On October 23, 1997, Continental announced that it intends to start daily, round-trip, nonstop service in the Los Angeles/Newark-San Salvador, and Newark-Guatemala City markets. Additionally, in December 1997, Continental increased (from once to twice daily) its nonstop frequency in the Houston-Belize/Guatemala City/San Salvador/San Jose, Costa Rica markets.

southbound flights.”²⁵ On July 15, 1998, United intends to commence daily, round-trip, nonstop flights between Washington, D.C. (Dulles Airport) and San Salvador.

These newly introduced operations should have a strong procompetitive impact in the U.S.-Central America market. They will afford enhanced daily services, carrying about 500,000 passengers annually. Importantly, these new U.S. gateways should provide competitive alternatives to American’s hub at Miami for travelers to and from Central America.

The opposing parties maintain that Miami now enjoys a unique relationship with the U.S.-Central America market, and that American’s dominance in the Miami-Central America market cannot be challenged by other competing U.S. carriers. One major factor that has fostered Miami’s hold on the U.S.-Central America market was the cluster of restrictive aviation regimes that had frustrated the expansion of effective competition. This factor has been eliminated by the new, open-skies accords agreed to between the U.S. and the TACA Group’s homeland governments.

Significantly, on May 12, 1998, Continental announced that it had acquired a minority ownership stake in the parent holding company of COPA (a TACA Group affiliated partner). Further, Continental and COPA announced that they will enter into a comprehensive operating and marketing alliance, including code sharing. Subject to government approval, Continental will code share on COPA’s daily flights between Miami and COPA’s hub in Panama City, and to Latin America destinations beyond Panama City. COPA will code share on Continental’s daily flights between Panama City and both Houston and Newark/New York, and to numerous U.S. destinations served by Continental. Among other things, the carriers have indicated that they intend to coordinate baggage check-in, frequent flyer programs, and certain airport facilities, and to engage in a broad array of joint marketing activities.

The record indicates that over fifty-five percent of the total traffic in the U.S.-Central America market flows over the Miami gateway.²⁶ Many of the passengers and shippers affected by the new U.S.-Central America services discussed above will be diverted from American’s operations at Miami. For example, while American’s Miami-Central America presence will undoubtedly remain strong, it is also true that American will now face increased competition at Miami and from other U.S. hubs in the Eastern United States. It is precisely because of the competitive concerns raised by the Department and the opposing parties concerning the applicants’ dominance in the Miami-Central America market that we have decided to impose various conditions and limitations on the Joint Applicants’ operations in this market. We find that these sufficiently reduce the competitive risks.

²⁵ United press release dated December 8, 1997.

²⁶ United objections at 2, dated January 28, 1998.

Further, we note that the Joint Applicants represent that each will independently establish their own fares (and levels of service) and that their code-share agreement is structured to make them compete with each other on fares. The Department also intends to monitor the applicants' operations to determine whether the applicants' actions in this matter continue to be appropriate and in the best interests of consumers.

C. Competitive Concerns

As an initial matter, the DOJ has offered its views regarding the claimed efficiencies of this alliance in contrast to the risks to competition that DOJ's analysis identifies. While we take seriously DOJ's concerns regarding the competitive issues raised by this case, we conclude that the conditions being imposed here will sufficiently reduce the risks to competition affected by the Joint Applicants' proposed arrangement. The Department's evaluation of this case fully recognized the risk to future competition posed by the request. However, in weighing the potential public benefits of this alliance against the competitive risks, we still conclude that the overall competitive opportunities in these markets, supplemented by the operational and organizational modifications being imposed here by the Department, and considerations of international transportation policy regarding open-skies in Central America and worldwide, continue to justify our conditional approval.

We have stated that open skies is a critical element of our international aviation policy. Therefore, unless there are adverse competitive impacts that cannot be mitigated so as to promote the consumer benefits to be gained by open skies, total rejection of cooperative arrangements provided for under an open-skies regime has the potential to frustrate, if not cancel, the overall benefits available through an open-skies regime.

Continental maintains that our tentative decision was arbitrary, capricious and contrary to the Department's policies, because the Department did not assess the cumulative effects of American's "Latin American" alliances.²⁷ While American's pending alliance cases may raise certain analogous competitive concerns, we have determined that in other relevant respects the cases are sufficiently distinct to warrant independent investigation.

We are troubled by the competitive issues raised by commenting parties concerning American's dominance at Miami, and agree that these concerns need to be appropriately resolved. The Joint Applicants now compete head-to-head in each of the Miami-Central America overlap markets. We have previously determined that the alliance agreement, as proposed, would further diminish this level of competition. Since no carrier besides American has a hub at Miami, it is unlikely that any other carrier would mount effective independent competitive nonstop service in any of these Miami-Central America markets, even if the Joint Applicants charged supra-competitive prices or reduced service below

²⁷ See the joint application of American and Linea Aerea Nacional Chile, S.A. (Lan Chile), Docket OST-97-3285.

competitive levels. Furthermore, while connecting services may in certain circumstances provide travelers and shippers with a viable competitive alternative to nonstop service, this option is absent here since the Joint Applicants provide all connecting services in these markets. Therefore, we find that the proposed alliance, absent our countervailing provisions, would result in certain anti-competitive outcomes in the affected Miami-Central America overlap markets, contrary to the public interest.

Without imposition of effective conditions on any grant of an exemption to the Joint Applicants, and without the ability for competitors to implement our open-skies agreements and international transportation policy, we agree with various parties that the proposed arrangement might further reinforce American's position as the dominant carrier to Central America, and might have the effect of inhibiting new entry through code sharing by American's U.S. competitors. We find that in this case the market concentration, potential future barriers to entry, overall dominance and size of the Joint Applicants if not restricted in operation in the Miami-Central America overlap markets would likely have an anti-competitive impact. Our international transportation policy is to consider the grant of these arrangements only where the markets at issue are currently fully open to new entry and operations – both *de jure* (by reason of bilateral agreements) and *de facto*. Only in such markets can we be assured that our actions granting the request in circumstances presented by this application will have overriding competitive and consumer benefits and thus be in the public interest. It is for these reasons that we find it appropriate to mitigate certain potentially anti-competitive components associated with this alliance by conditioning our approval in several respects.

D. Conditions

The commenting parties have offered the Department a variety of restrictions that they want imposed on the American-TACA Group arrangement in addition to those proposed in our show-cause order. These parties maintain that further conditions are necessary to assure continued competition in the U.S.-Central America market, especially at Miami. The additional conditions sought by the commenting parties range from seeking mere clarification of Order 97-12-35 to prohibiting all communication, coordination, and integration among the applicant carriers. While these parties would have the Department modify its conditional approval in varying degrees, we find that our tentative decision, as crafted and as modified below, strikes an appropriate balance by tempering the potentially anticompetitive elements of the arrangement while allowing the applicants to implement the service and operational synergies that the Department finds in the public interest.

Continental and Delta urge the Department to require the TACA Group to implement an "equivalent" code-share with another U.S. carrier before finalizing our tentative decision. United maintains that another competing U.S. carrier-TACA Group arrangement is the only effective way to guarantee competition in the Miami-Central America market. While we have recognized that competing arrangements could advance many consumer and service benefits promoted by an open-skies aviation environment, we do not find it appropriate for the Department, at this time and in this case, to mandate such a condition.

Further, as we have stated, our review/renewal process of this case will fully consider the competitive structure of the market within two years, including any code-share proposals offered to the TACA Group carriers.²⁸

Continental also recommends that the TACA Group be directed to report to the Department any code-share “invitations” from other U.S. carriers that it receives, and, if found unacceptable by the TACA Group, to provide the Department the basis for its rejection of the proposed arrangement. As noted above, an element in our future review of this alliance is whether the TACA Groups’ failure to engage in code-share relationships with additional U.S. carriers has contributed to a market structure that does not continue to support the approval of a code-share arrangement. Therefore, we regard the recently announced Continental-COPA code-share alliance as significant.

Continental urges the Department to impose conditions on the applicants that would effectively prevent them from exploiting “fully synergies or economies of scale gained through code sharing, coordination and integration.”²⁹ Delta would have the Department prohibit the applicants from conducting any coordination functions under Section 8 of the proposed Agreement.³⁰ We do not agree. It has been our intention in this matter to allow the applicants to benefit from such arrangements, consistent with the public interest. We find that the limitations and conditions imposed by this order satisfy this important decisional criterion.

Delta urges the Department to require the applicants to file periodic certifications under “oath” attesting that they have not participated in any “prohibited” activities, and to conduct periodic “audits” of alliance activities. We find nothing in the record of this case to warrant such measures.

Delta asks the Department to require American and the TACA Group to file all alliance agreements (including those applicable to the day-to-day operations of the alliance) in the Docket for review and comment by interested parties. We do not agree. In previous cases, we have directed the applicant carriers to submit certain subsequent subsidiary agreement(s) (not including day-to-day operations) implementing their alliance agreements for prior approval, but not in a public docket. We find no basis for a more inclusive reporting practice here.³¹

²⁸ Order 97-12-35 at 29.

²⁹ Continental’s Objections of January 28, 1998, at 17.

³⁰ *See* Delta’s Objections of January 28, 1998, at 15.

³¹ Regarding this requirement, we do not expect American and the TACA Group to provide the Department with minor technical understandings that are necessary to blend fully their day-to-day operations but that have no additional substantive significance. We do, however, expect and direct the applicants to provide the Department with any contractual instruments that may materially alter, modify, or amend the respective code-share and/or alliance agreements, and other major implementing

Continental asks the Department to describe more fully the activities prohibited by our fixed blocked-space condition. For example, Continental urges the Department to (1) prohibit selling into the other partners' block of seats, (2) prohibit exchanging unused seats for refunds, and (3) require the applicants to sell blocks of seats to one another at a "reasonable" price. Order 97-12-35 emphasizes that the Department's interests in this case are to guarantee, among other things, that American and the TACA Group continue vigorous head-to-head competition in the Miami-Central America market. For this reason, the Department found it appropriate to impose a fixed blocked-space condition in the Miami markets.³² In addition, the Department tentatively decided to require the applicants to file the mandated blocked-space arrangements for prior approval by the Department. While we find it inappropriate, at this time, to amend our proposed condition to include the narrow specificity urged by Continental, we reiterate here our insistence that the applicants erect a wall of independence around each of their separate marketing of services in these Miami-Central America markets. Certainly, the three elements suggested by Continental each advances the independence standard expected by the Department in this decision, and the first two points in large measure define what a "fixed" blocked-space agreement means.

American maintains that the Department should vacate its requirement for a fixed blocked-space condition because it is contrary to the terms of the open-skies' agreements, a similar condition has not been imposed in other code-share cases, and there is no policy basis for doing so here. We find that American's view in this matter is mistaken. Our regulatory standards in these matters require the Department to determine if a cooperative arrangement is in the public interest. Nothing in the terms of the U.S.-Central America agreements provides otherwise. Regarding American's claim that similar conditions have not been imposed in other code-share cases, the Department examines each proposed code-share arrangement on its individual merits based on the particular facts and circumstances presented by each case. Accordingly, based on our evaluation of the instant

agreements. Such agreements must be reduced to writing. If within the scope of the authority already granted, these agreements would continue to have effect until and unless disapproved. Significant implementing agreements related to the structure of the alliance must also be filed if written. In addition, the blocked-space arrangements mandated by the conditions imposed in our approval here must also be filed for prior approval. Contractual instruments and agreements in principal between the applicants and additional carrier partners, regardless of whether Department approval is sought for any activities related to such additional partners and/or whether the instruments/agreements may be drafted as separate agreements which merely supplement the "Code-Share and/or Alliance Agreements," must also be filed for review. In such cases, the Department will determine what further action, if any, may be required with respect to such agreements.

³² The TACA Group maintains that this requirement is too restrictive in view of recent competitive developments in the U.S.-Central America market. While we recognize that competing carriers have now started new direct services from competing U.S. hubs in this market, and that Continental's new relationship with COPA will result in added competition at Miami, we find that this provision is still necessary to reduce the competitive risks identified by the Department in the Miami-Central America market, and to prevent such effects in other markets.

request, we have determined that the public interest requires the imposition of various conditions in order to assure continued competition in the affected market as explained above.

Delta and the TACA Group both find the proposed duration of our approval in this case inappropriate. We find that our tentative decision requiring a two-year approval more appropriately balances the need of the applicants to fully implement the service/operational synergies promoted by the proposed alliance and the Department's interest to fully evaluate the competitive aspects of its decision on the U.S.-Central America market.

As a final matter, Continental states that our proposed approval of the various applications, to the extent that it would allow American to hold out code-share service over Mexico City, appears to raise issues of "mutual exclusivity" with a recent request by United and Compania Mexicana de Aviacion, S.A. de C.V. ("Mexicana") for code-share authority in various U.S.-Mexico-Central and South America markets.³³ Continental also contends that because of the city-pair designation limitations in the U.S.-Mexico bilateral, granting either of these applications could preempt Continental and other U.S. carriers from operating their own flights on those routes. Continental takes the position that the *Ashbacker*³⁴ doctrine requires the Department to invite other U.S. applications for beyond-Mexico authority and to select a carrier or carriers for any available designations in a separate, comparative proceeding, deferring award of any beyond-Mexico code-share authority to American in this case or to United in Docket OST-98-3322.³⁵

Continental cited no specific examples of mutual exclusivity in its objections, but in its answer to United in Docket OST-98-3322 it noted an "overlap" between the requests of American and United at Miami, Los Angeles, San Francisco, and Washington, on the one hand, and Guatemala City, Panama City, and San Jose, Costa Rica, on the other hand. No party responded to Continental's argument in this proceeding, but, in Docket OST-98-3322, United stated that it already has the requisite designations to provide the code-share services over Mexico City to Central America that it has requested.

There is no *Ashbacker* problem with the American-TACA Group applications in this proceeding. Our review of the specifics of those applications indicates that most of the

³³ On January 12, 1998, in Docket OST-98-3322, United and Mexicana filed a joint application for an exemption and statements of authorization to permit United to hold out service between certain U.S. points and Guatemala City, San Jose (Costa Rica), Panama City, Bogota, Caracas, Lima, Santiago, and Buenos Aires, by placing its code on Mexicana flights beyond Mexico City. United would also hold out fifth freedom service in markets where bilaterally permitted, including Mexico City-Guatemala City/San Jose/Panama City.

³⁴ *Ashbacker Radio Corporation v. FCC*, 326 U.S. 327 (1945).

³⁵ Continental took a similar position in its January 27, 1998, answer to the United/Mexicana application in Docket OST-98-3322.

authority requested by American to serve points beyond Mexico City³⁶ is currently unavailable under the U.S.-Mexico bilateral agreement and must therefore be denied. First, four of the U.S. gateways requested by American are not available for U.S. carrier service beyond Mexico under the two specified bilateral Routes, 1(b) and 1(c) of Annex I.³⁷ Second, United is authorized and designated for services beyond Mexico City to points in Central America, including all of American's requested points, in conjunction with Los Angeles-Mexico City and Washington-Mexico City service under Route 1(c) of the Route Schedule.³⁸ United's authority precludes other designations for these services under the terms of the bilateral.³⁹ And third, American, unlike United, does not currently hold route authority to serve any Central American points beyond Mexico City.⁴⁰

American has also requested authority to serve Panama City, Panama, from Dallas/Fort Worth over Mexico City, which is currently available under Route 1(b) since there are no other designations on that route and no pending applications.⁴¹ We do not consider Continental's objections in this proceeding to raise an *Ashbacker* issue with regard to this route, or to warrant a further solicitation of interest in an application which has been pending for quite some time. Moreover, one of Continental's chief concerns, that designations over Mexico for code-share services will pre-empt future service by U.S. carriers planning to operate their own flights, is addressed by a recently adopted condition establishing a rebuttable presumption in favor of replacing code-share services with direct air carrier services in any Mexican city-pair market.⁴² We will attach that condition to the authority granted in this proceeding.

³⁶ Joint application for statements of authorization to engage in certain reciprocal code-sharing services, filed July 8, 1996, especially annexes C, E and F.

³⁷ Miami, Orlando, San Francisco, and San Juan, Puerto Rico.

³⁸ See Order 97-4-27 and United certificate for Route 566, segment 4 and condition 13.

³⁹ While American has also requested authority to serve some Central American points from Houston, a specified gateway on Route 1(c), it is not clear whether Mexico would interpret the route restrictions to permit a second carrier designation over Mexico City to these points, which are also on United's certificate.

⁴⁰ American has applied in this proceeding for an exemption to allow it to integrate its certificate authority to serve points in Central America and the Caribbean (Route 137), South America (Route 389), and Mexico (Route 560).

⁴¹ The route permits service "from Dallas/Fort Worth and San Antonio to Mexico City/Toluca and Acapulco, and beyond to points in Panama and beyond."

⁴² Order 97-9-38 applied the following condition to all U.S.-Mexican and U.S.-U.S. carrier code-share operations: "Authorization of 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) sufficient designations are not available to authorize the proposed direct carrier service, and (2) the Department determines that the proposed direct-carrier service would provide benefits and service options

We will therefore deny American's applications for exemption, route integration, and code-share authority to the extent that they contemplate service beyond Mexico, with the exception of service requests encompassed by Route 1(b) of the bilateral. Should additional designations become available to U.S. carriers for services beyond Mexico City, American is free to apply for such authority.

To avoid any chance for confusion due to the expandable nature of the American-TACA Group code-share agreement,⁴³ we will condition the statements of authorization to make it clear that code-share services in any city-pair markets not listed in the July 8, 1996, application will require an appropriately-filed new application. Further, to avoid any chance for confusion due to the fact that American's underlying authority beyond Mexico is being provided by route integration, we will attach our standard condition for route integration awards to make it clear that it does not grant additional limited-entry route authority.

O&D Survey Data Reporting Requirement⁴⁴

No party opposes the imposition of an Origin-Destination Survey of Airline Passenger Traffic (O&D Survey) reporting requirement. To further ensure that our action here does not lead to anticompetitive consequences, we have decided to grant confidentiality to the TACA Group's Origin-Destination report and special report on code-share passengers. Currently, we grant confidential treatment to international Origin-Destination data. We provide these data confidential treatment because of the potentially damaging competitive impact on U.S. airlines and the potential adverse effect upon the public interest that would result from unilateral disclosure of these data (data covering the operations of foreign air carriers that are similar to the information collected in the Passenger O&D Survey are generally not available to the Department, to U.S. airlines, or to other U.S. interests).

14 C.F.R. Part 241 section 19-7(d)(1) provides for disclosure of international Origin-Destination data to *air carriers* directly participating in and contributing to the O&D

superior to the code-share operations in the market." We find the condition to be equally warranted in the case of U.S.-third country carrier code shares.

⁴³ The American/TACA Group code-share agreement provides for specific services "as such Annex may be modified at any time and from time to time as set forth in the Alliance Agreement and herein."

⁴⁴ Each TACA Group affiliated air carrier shall attach to its O&D Survey quarterly report a foreign air carrier certification (*see* 14 C.F.R. § 217.10, Instructions). An authorized corporate officer, executive, or director must sign the required certification. The certification must indicate that the O&D Survey report was prepared under the direction of an officer, executive, or director of the company; that the report was carefully examined; that the report correctly reflects the records of the respective affiliated air carrier; and that the report is complete and accurate. The Department's continuing review of the authority granted by this order will include a determination on whether the TACA Group affiliate air carriers continue to file, on a timely basis, complete and accurate quarterly O&D Survey and Scheduled T-100(f) "Foreign Air Carrier Traffic Data by Nonstop Segment and On-flight Market" data.

Survey. While we have found it appropriate to direct the TACA Group to provide certain limited Origin-Destination data to the O&D Survey, the TACA Group is not an air carrier within the meaning of Part 241. 14 C.F.R. Part 241, Section 03 defines an air carrier as “[a]ny citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.” The TACA Group accordingly will have no access to the data filed by U.S. air carriers. Moreover, we are making the TACA Group’s submissions confidential while maintaining the current restriction on access to U.S. air carrier Origin-Destination data by foreign air carriers.

Operation under a Common Name/Consumer Issues

We affirm our directive that if American and the TACA Group choose to operate under a common name or use “common brands”, they must obtain prior approval from the Department prior to such operation.

Accordingly:

1. Except as provided in paragraph 3, we exempt American Airlines, Inc. and the TACA Group from 49 U.S.C. section 40109(c) to the extent necessary to permit them to engage in scheduled foreign air transportation of persons, property, and mail as described in Dockets OST 96-1511, OST 96-1512, OST 96-1513, OST 96-1514, OST 96-1515, OST 96-1518, and OST 96-1520;
2. Except as provided in paragraph 3, we grant American Airlines, Inc. and the TACA Group Statements of Authorization under 14 C.F.R. Parts 207 and 212, respectively, to engage in reciprocal code-share services as described in Order 97-12-35;
3. The authority granted in ordering paragraphs 1 and 2 shall not include services by American Airlines, Inc. involving city-pair segments behind or beyond Mexico City, except as may be permitted under Route 1(b) of Annex I of the U.S.-Mexico Air Transport Agreement of 1960, as amended and extended:
 - (a) The authority granted in this paragraph is subject to the condition that authorization of 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) sufficient designations are not available to authorize the proposed direct carrier service, and (2) the Department determines that the proposed direct-carrier service would provide benefits and service options superior to the code-share operations in the market;
 - (b) American Airlines, Inc. shall file notice with the Department if it discontinues services permitted under Route 1(b) of Annex I of the U.S.-Mexico Air Transport Agreement of 1960, as amended and extended, for 90 days or longer. This notice shall be given as soon as the decision to discontinue service

(other than seasonal/intermittent service) is made, but in no case later than the 91st day of dormancy. Notices shall be filed in the form of a letter addressed to the U.S. Department of Transportation, U.S. Air Carrier Licensing Division, X-44, 400 Seventh Street, S.W., Washington, D.C. 20590, and shall identify the dormant route segment, the certificate route number, and the date the 90th day of dormancy will or did occur;

4. The authority granted in ordering paragraphs 1 and 2 shall become effective on the service date of this order, and remain in effect for a period of two years;

5. The code-sharing operations authorized by this order are expressly limited and conditioned upon the requirements as set forth in (a) through (g) below:

- (a) The authorities approved by this order shall be subject to the condition that neither American nor the TACA Group shall give any force or effect to the establishment of a Joint Alliance Committee as defined in section 8 of the Applicants' Alliance Agreement;
- (b) The authorities approved by this order shall be subject to the condition that neither American nor the TACA Group shall give any force or effect to any exclusivity provision in their arrangement which (1) restricts the TACA Group affiliates from entering into any marketing and/or interline arrangement(s) with airline(s) domiciled in the United States, or (2) restricts American from entering into any marketing and/or interline arrangement(s) with airline(s) domiciled in Central America;
- (c) The authorities approved by this order shall be subject to the condition that the marketing carrier may acquire seat capacity on the operating carrier's flights to offer competitive non-stop service between Miami and Belize City, Guatemala City, Managua, Panama City, San Jose, San Pedro Sula, San Salvador, and Tegucigalpa for a fixed number of seats, based on a fixed price per seat – commonly described as a fixed blocked-space arrangement, to be determined by the contracting parties;
- (d) The authorities approved by this order shall be subject to the condition that American and the TACA Group will be required to maintain separate pricing, inventory and yield management with respect to local U.S.-point-of-sale passengers flying nonstop between Miami and Belize City, Guatemala City, Managua, Panama City, San Jose, San Pedro Sula, San Salvador, and Tegucigalpa to be managed, marketed and sold independently by each of the applicant partners;

- (e) The authorities approved by this order shall be subject to the condition that American and the TACA Group may not coordinate or provide more information by one party to the other concerning current or prospective fares or seat availability for such passengers than it makes available to airlines and travel agents generally;
 - (f) The authorities approved by this order shall be subject to the condition that American and the TACA Group shall not operate or hold out service under a common name or brand without obtaining prior approval from the Department; and
 - (g) The authorities approved by this order are limited to the points and services specified in the Joint Application for Statements of Authorization, filed July 8, 1996, by American Airlines, Inc. and the TACA Group. New code-share services by the Joint Applicants will require additional statements of authorization;
6. The route integration authority granted in ordering paragraph 1 is subject to the condition that service under American Airlines' certificates for Routes 137, 389, and 560 shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award on the route integration authority requested should be construed as conferring upon American Airlines rights (including fifth-freedom intermediate and/or beyond rights) to serve markets other than as requested in this proceeding where U.S. carrier entry is limited unless American Airlines 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; (b) should there be a request by any carrier to use the limited-entry route rights that are included in American Airlines' certificates by virtue of the route integration authority granted here, but that are not being used by American Airlines, the holding of such authority by route integration will not be construed as providing any preference for American Airlines in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue;
7. The authority granted in ordering paragraphs 1 and 2 is expressly conditioned upon the requirement 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 carriers selling and operating such transportation accept all passenger obligations established in their contracts of carriage, 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 airspace the Federal Aviation Administration has issued a flight prohibition;
8. We require American Airlines, Inc. and the TACA Group to comply with the rules for airline designator code sharing set forth in 14 C.F.R. 399.88 of the Department's

regulations, and any amendments to the Department's regulations concerning code-share arrangements that may be adopted;

9. We direct the TACA Group affiliate air carriers to report individually, on a quarterly basis, full-itinerary Origin-Destination Survey of Airline Passenger Traffic data for all passenger itineraries that include a United States point (similar to the O&D Survey data already reported by its alliance partner American Airlines, Inc.). The full itinerary record is defined as the passenger's complete flight itinerary from origin to destination as opposed to the abbreviated gateway record reported under T-100(f);
10. We direct American Airlines, Inc. and the TACA Group to submit any subsequent and/or subsidiary agreement(s) implementing the respective Code-Share Agreements and/or the Alliance Agreement for prior approval;
11. We require American Airlines, Inc. and the TACA Group to establish fares independently in each of the markets covered by the agreements;
12. Regarding Aviateca S.A., Aviateca may not conduct the operations authorized in ordering paragraphs 1 and 2 using its own aircraft and crews without further Department action. However, our action here does not affect Aviateca's Department authorities to conduct operations to the United States as authorized by Notice of Action Taken October 27, 1993, in Docket 46583, Order 92-10-53, in Docket 46945 and Order 90-8-58, in Docket 46582. Operations under these later authorities may continue to be conducted by Aviateca using its own aircraft and crews, consistent with the scope of its Operations Specifications issued by the Federal Aviation Administration, and with the Department's "Clarification Concerning Examination of Foreign Air Carriers' Request for Expanded Economic Authority," dated October 23, 1995;
13. Regarding Nicaraguense de Aviación S.A. and TACA de Honduras S.A., the authority authorized in ordering paragraphs 1 and 2 is limited to operations conducted under wet lease by a duly authorized and properly supervised U.S. or foreign carrier. Nicaraguense de Aviación S.A. and TACA de Honduras S.A. may not conduct the operations authorized in ordering paragraphs 1 and 2 with their own aircraft and crew without further Department action;
14. We may amend, modify or revoke this authority at any time and without hearing;
15. We grant all motions for leave to file;
16. We grant all motions for confidential treatment under 14 C.F.R. § 302.39, in accordance with the Department's confidentiality determinations in this case;
17. To the extent not otherwise granted or dismissed, we deny all requests and motions in Docket OST-96-1700; and

18. We shall serve this order on all persons on the service list in this docket.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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