

## NEW

### NOTICE OF ACTION TAKEN

**April 30, 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.*

Application of: **Trans World Airlines, Inc.** filed **10/30/97** in Docket **OST-97-3069** for:

**XX** Exemption under 49 U.S.C. 40109 to:

**Integrate its service to Madrid and Barcelona, Spain, with its service to other points in Spain, and to other points on its certificate for Route 147. TWA states that it plans to offer code-share services with Air Europa Lineas Aereas, S.A. between points in the United States via New York to Madrid and Barcelona and beyond to other points in Spain.**

Application of: **Air Europa Lineas Aereas, S.A.** filed **10/30/97** in Docket **OST-97-3070** for:

**XX** Exemption under 49 U.S.C. 40109 to provide the following service:

**Scheduled foreign air transportation of persons, property, and mail between (1) Spain and the following points in the United States: Atlanta, Boston, Chicago, Cleveland, Dallas/Ft. Worth, Denver, Detroit, Houston, Indianapolis, Las Vegas, Los Angeles, Miami, Minneapolis, New Orleans, Orlando, Phoenix, Sacramento, St. Louis, San Antonio, San Diego, San Francisco, San Juan, Seattle, Tampa, and Washington, D.C., and (2) Barcelona and New York. Air Europa states that it intends to operate the services under a code-share arrangement with TWA.**

Joint application of **Trans World Airlines, Inc., and Air Europa Lineas Aereas, S.A.** filed **10/30/97** and supplemented **12/19/97 and 1/8/98**, **Undocketed** for:

**XX** Statements of authorization under 14 C.F.R parts 207 and 212 for:

**(1) TWA to display Air Europa's airline designator code for the carriage of Air Europa's foreign air transportation of passengers and cargo on flights operated by TWA between (a) Madrid and Barcelona, on the one hand, and New York, on the other hand, and (b) between New York and Miami, on the one hand, and Atlanta, Boston, Chicago, Cleveland, Dallas/Ft. Worth, Denver, Detroit, Houston, Indianapolis, Las Vegas, Los Angeles, Miami, Minneapolis, New Orleans, Orlando, Phoenix, Sacramento, St. Louis, San Antonio, San Diego, San Francisco, San Juan, Seattle, Tampa, and Washington, D.C.; and (2) Air Europa to display TWA's airline designator code for the transportation of persons, property, and mail on flights operated by Air Europa between Madrid and Barcelona, on the one hand, and Alicante, Barcelona, Bilbao, Ibiza, La Coruña, Madrid, Malaga, Miami, New York, Palma, Santiago, Seville, and Valencia, on the other hand.**

Applicant reps.: **Richard J. Fahy, Jr. (TWA) 202-457-4746** DOT Analyst: **John Quay 202-366-1052**  
**Aaron A. Goerlich (Air Europa) 202-822-9070**

**Responsive Pleadings:** American Airlines, Inc., Delta Air Lines, Inc., and United Air Lines, Inc., filed answers to the applications, and TWA/Air Europa filed a consolidated reply. American stated that it did not object to the applications, provided the Department also approved the code-share applications of American and Iberia Lineas Aereas de Espana, S.A. for U.S.-Spain services. Delta and United state that they did not object to approval of the TWA/Air Europa code-share services that are explicitly authorized under the U.S.-Spain aviation agreement, but

they argued that the Department should not grant any extrabilateral authority to the applicants until Spain allows third-country code-share services, such as those for which each carrier has applied.

## DISPOSITION

XX *Granted in Part (subject to conditions, see below)*

XX *Balance Dismissed (extrabilateral authority, see below)*

The above action with respect to TWA's exemption request and Air Europa's exemption request was effective when taken: **April 30, 1998**, through **April 30, 1999**.

The above action with respect to the requests for statements of authorization was effective when taken: **April 30, 1998**, and will remain in effect indefinitely, subject to the conditions listed below.

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 and the U.S.-Spain code-share operations authorized are consistent with the air transport agreement between the United States and Spain.

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

XX Standard exemption conditions (attached).

XX Holder's certificate of public convenience and necessity (Trans World Airlines).

XX Foreign Air Carrier Permit (Air Europa).

**Conditions:** The statements of authorization granted are subject to the following conditions:

(a) The statements of authorization will remain in effect only as long as (i) TWA and Air Europa continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) TWA and/or Air Europa must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating all or any portion of the approved code-share services.

(c) The code-share operations authorized must comply with 14 CFR 399.88 of the Department's regulations and any amendments to the Department's regulations concerning code-share arrangements that may be adopted, and are expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out the service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept all obligations in the contract of carriage with the passenger; that the passenger liability of the operating carrier be unaffected; and that the operating carrier 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.

(d) Under the U.S.-Spain aviation agreement, service by carriers of Spain to the Washington, D.C./Baltimore area is limited to one airport. Spain has chosen Dulles International Airport as the one airport. Therefore, the code-share operations that we authorized for TWA/Air Europa for Washington, D.C. are limited to service to Dulles International Airport.

(e) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

The exemption authorities granted are subject to the following conditions:

(a) The route integration authority granted to TWA is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in our award of the route integration authority requested should be construed as conferring upon TWA rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. entry is limited unless TWA notifies the Department 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; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in TWA's authority by virtue of the route integration exemption granted here, but that are not then being used by TWA, the holding of such authority by route integration will not be considered as providing any preference for TWA in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

(b) The exemption authority granted Air Europa to serve Atlanta, Cleveland, Denver, Detroit, Las Vegas, Minneapolis, New Orleans, Orlando, Phoenix, San Antonio, San Diego, San Francisco, and Seattle is subject to the condition that service may only be provided under a code-share arrangement with TWA.

**Dismissal:** We dismissed that portion of the exemption applications and the joint application for statements of authorization to the extent that they requested authority for service not provided for under the U.S.-Spain aviation agreement. Taking into account the state of our aviation relationship with Spain, including the absence of meaningful progress in our efforts to achieve an open-skies regime, we determined that it would not be consistent with the public interest to award the requested extra-bilateral authority. Accordingly, we did not grant authority to serve the following U.S. points: Indianapolis, Sacramento, and Tampa, or the following Spanish points: Alicante, Bilbao, La Coruña, Ibiza, Santiago, Seville, and Valencia.

With respect to American's comments, we contemporaneously issued a notice granting portions of the applications of American and Iberia to engage in code-share services in the U.S.-Spain market.

**U.S. Carrier**  
**Standard Exemption Conditions**

In the conduct of the operations authorized by the attached order, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with the requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

**Foreign Air Carrier**  
**CONDITIONS OF AUTHORITY**

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

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

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

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

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