



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

Issued by the Department of Transportation on May 15, 1998

NOTICE OF ACTION TAKEN -- DOCKET OST 98-3770

CORRECTED COPY¹

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **Aeropostal Alas de Venezuela, C.A.**

Date Filed: April 24, 1998

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between (1) Caracas and Porlamar, Venezuela, and San Juan, PR; and (2) Caracas and Orlando, FL and Atlanta, GA, via the intermediate point Aruba; and charters pursuant to 14 CFR 212 of the Department's regulations.²

Applicant representative: Pierre Murphy 202-872-1679

Responsive pleadings: The Government of Puerto Rico and the Greater Orlando Aviation Authority filed answers in support.

DISPOSITION

Action: Approved in part, deferred in part (see below)

Action date: May 15, 1998

Effective dates of authority granted: May 15, 1998 - May 15, 1999

Basis for approval (bilateral agreement/reciprocity): U.S.-Venezuela Air Transport Agreement.

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

Standard exemption conditions (attached) Foreign air carrier permit conditions (Order - -)

Remarks: We granted Aeropostal authority to conduct the operations for which it had firm plans: Caracas-Atlanta services under its code-sharing agreement with Delta. We deferred action on the remainder of its request.

We also found, based on the record, that the applicant is operationally and financially qualified to conduct the proposed services, as limited and conditioned; that it is properly licensed; and that it is substantially owned and effectively controlled by citizens of Venezuela. The FAA has advised us that, so long as Aeropostal's authority is limited to use of aircraft and crews under the operational control of Delta Air Lines, it knows of no reason why we should act unfavorably on the carrier's application.

Special conditions: (1) In the conduct of these operations, Aeropostal shall only use aircraft wet-leased from, or place its designator code on flights operated by, Delta Air Lines, Inc., provided that Delta receives requisite authority under the provisions of 14 CFR 207 of the Department's regulations.³ (2) Aeropostal shall not perform any Third or Fourth Freedom

¹ In keeping with our policy in granting Venezuelan carriers charter authority, this Notice of Action Taken is corrected to add the condition requiring Aeropostal to obtain our approval in the form of a statement of authorization before operating any charter trips in the U.S.-Venezuela market, as provided for in section 212.4(e). (See Orders 88-8-15 and 81-5-44.) We note that, under 14 CFR 212.4, all foreign carriers are required to obtain a statement of authorization to engage in Fifth Freedom charter flights to and from the United States.

² Aeropostal stated that it intends to initiate its U.S.-Venezuela operations by placing its designator code on flights operated by Delta Air Lines, Inc. between Atlanta and Caracas. Aeropostal acknowledges that it is not permitted to operate to the U.S. with its own aircraft and that therefore the proposed code-share arrangement with Delta on Delta's existing Atlanta-Caracas scheduled service is the only way Aeropostal can operate to the U.S. (Application at 2.)

³ We concurrently granted Delta's request for a statement of authorization to conduct the proposed Atlanta-Caracas code-share operations on behalf of Aeropostal.

charters unless specific authority in the form of a statement of authorization for such charter(s) has been granted by the Department. Aeropostal shall file applications for such statements of authorization at least 30 days before the charters involved, pursuant to the procedures set forth in 14 CFR 212.5; *provided* that applications involving all-cargo charters may be filed up to ten (10) calendar days before the flights.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted or deferred, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/general/orders/aviation.html>.*

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).