



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

Issued by the Department of Transportation on February 18, 1998

NOTICE OF ACTION TAKEN -- Undocketed

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).

Joint Applicants: Air Canada and Compania Mexicana de Aviacion, S.A. de C.V. Date Filed: January 5, 1999

Relief requested: Statements of Authorization under 14 CFR Part 212 to permit Air Canada to display the designator code of Mexicana on flights operated by Air Canada between Chicago, Illinois, and the Canadian coterminal points Toronto, Montreal, Ottawa, and Winnipeg, carrying Mexicana traffic moving solely between Mexico and Canada; and to permit Mexicana to display the designator code of Air Canada on flights operated by Mexicana between Chicago, Illinois, and Mexico City, Mexico, carrying Air Canada traffic moving solely between Canada and Mexico.

If renewal, date and citation of last action: New authority.

Applicant representative(s): Anita M. Mosner and Steven Y. Quan (for Air Canada) on 202-342-6794; and Robert D. Papkin and Charles F. Donley II (for Mexicana) on 202-626-6840

Responsive pleadings: By letter dated January 14, 1999, United Air Lines, Inc., urged us to grant the joint application, asserting that favorable action on this and similar applications would benefit both the code-share partners and the traveling public.

By letters dated January 14, 1999, American Airlines, Inc., and Northwest Airlines, Inc., urged us not to grant the application pending the negotiation of new codesharing rights with Mexico.

By letters dated January 25 and January 26, 1999, Mexicana and Air Canada, respectively, filed replies.

DISPOSITION

Action: Approved (see Remarks below).

Action date: February 18, 1999

Effective dates of authority granted: February 18, 1999, through February 18, 2000.

Remarks: Under 14 CFR section 212.11, we will grant a statement of authorization if we find that the proposed operations meet the requirements of Part 212 and are in the public interest. In determining the public interest, a primary factor that we consider is the extent of reciprocity on the part of the applicants' homelands, here Canada and Mexico. We also consider, as appropriate, other factors that may bear on our public interest determination. In our examination of code-share reciprocity with Air Canada's homeland, we noted that during U.S.-Canada bilateral consultations held on November 18, 1997, the two delegations reached an ad referendum agreement, memorialized in an Agreed Minute, that their Governments would allow cooperative marketing arrangements between each other's airlines and third-country airlines. This understanding provides, among other things, for the third-country code-share operations at issue on the record of this proceeding, and, we note that no party to this proceeding has questioned the adequacy of our bilateral code-share regime with Canada. Examining the code-share regime with Mexicana's homeland, we noted that, on August 5, 1998, the Mexican authorities provided the U.S. Government with oral assurances (which they subsequently confirmed by letter dated September 14, 1998) that they will authorize U.S. carriers to codeshare with third-country partners for services to, from and via Mexico. This is evidence of positive reciprocity with Mexico in the area of codesharing for the type at issue here. Moreover, on February 15, 1999, the United States and Mexico signed an ad referendum agreement on bilateral code-share services that significantly expands the operations that can be conducted by carriers of both countries. This arrangement demonstrates the positive aviation relationship that we now have with Mexico in the area of Third/Fourth Freedom code-share operations and offers additional support for approving this application. Under the circumstances, we determined that grant of the subject code-share application, for a period of one year, as conditioned (see below), is consistent with the public interest.

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

Foreign air carrier permit conditions, and see below.

The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 of the Department's regulations, and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirement 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 (that is, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. Also, Air Canada and/or Mexicana 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 any or all of the approved code-share services. (We expect this notification to be received within ten days of such noneffectiveness or of such decision.) Further, the authority granted here is specifically conditioned so that neither Air Canada nor Mexicana shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

**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) the applicant was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) 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/deferred/dismissed, 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.

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