



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

Issued by the Department of Transportation on January 29, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST 97-3237

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 Motion for Immediate Action on Application of **UNITED AIR LINES, INC. and COMPANIA MEXICANA DE AVIACION, S.A. DE C.V (MEXICANA)**, filed 1/13/99 for:

XX Exemption for United under 49 U.S.C. §40109 to provide the following service:

Scheduled foreign air transportation of persons, property and mail between Los Angeles and Chicago, on the one hand, and Huatulco, Mexico, on the other hand, via Mexico City under a code-share arrangement with Mexicana.

XX Statement of Authorization for Mexicana under Part 212 to:

Permit Mexicana to display United's airline code on flights operated by Mexicana between Mexico City and Huatulco, for the carriage of United's traffic moving between Los Angeles and Chicago, on the one hand, and Huatulco, Mexico, on the other hand beyond via Mexico City.

American Airlines, Inc. filed an answer in opposition to the motion, arguing that the proposed operations should only be authorized pursuant to a new codesharing provision in the U.S.-Mexico Air Transport Agreement.

Applicant rep: Jeffrey A. Manley (202) 879-5161 DOT Analyst: Linda L. Lundell (202) 366-2336
Robert Papkin 626-6601

DISPOSITION

XX **Granted (See Remarks)**

The above action was effective when taken: January 28 1999, through January 28, 2000

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

XX **The authority granted is consistent with the January 26, 1999 ad referendum agreement between the United States and Mexico.**

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

XX **Holder's certificate of public convenience and necessity**

XX **Standard exemption conditions (for United) (attached)**

(See Reverse)

Remarks: In regard to American's answer, we noted that on January 26, 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, including the beyond-gateway code-sharing services at issue here. In these circumstances, we determined that the grant of the requested authority for the beyond-Mexico City code-share services was in the public interest.

Conditions: The code-share operations authorized here for United and Mexicana are subject to the following conditions:

- (a) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 and with any amendment 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 requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in the computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carrier with the passenger; that the passenger liability of the operating carrier be unaffected; and that the operating carrier shall not permit the code of its U.S. carrier code-sharing partner to be carried on any flight that enters, departs, or transmits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition;
- (b) The authority granted here is specifically conditioned so that neither United nor Mexicana shall give any force and effect to any contractual provisions between themselves that are contrary to these conditions; and
- (c) Authorization of the code-share services may be withdrawn in any U.S.-Mexico city-pair where another U.S. carrier proposes to operate services with its own aircraft (direct carrier services), and (1) additional designations are not available to authorize the proposed direct carrier service; and (2) the Department determines that the proposed direct carrier services would provide benefits and service options superior to the code-share operations in the market.

On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found the applicant qualified to provide the services authorized.

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; and (2) grant of the authority was consistent with the public interest. To the extent not granted, we deferred action on the remaining 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/reports/reports_aviation.asp.*

APPENDIX

U.S. Carrier Standard Exemption Conditions

In the conduct of operations authorized by the attached notice, 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 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, 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.