



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC

Issued by the Department of Transportation on April 8, 1999

**NOTICE OF ACTION TAKEN -- DOCKET OST-95-979 & UNDOCKETED**

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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 application of **Continental Airlines, Inc. and Continental Express, Inc.** filed **12/4/98** in Docket **OST-95-979** to:

**XX** Renew exemption for Continental/Continental Express under 49 U.S.C. 40109 to provide the following service:

**Scheduled foreign air transportation of persons, property, and mail between (1) Newark, New Jersey, and Prague, Czech Republic, and (2) Newark, New Jersey and Bratislava and Kosice, Slovak Republic, via Prague. The joint applicants intend to operate this service under a code-share arrangement with Czech Airlines (CSA). They have requested the authority for an indefinite period.<sup>1</sup>**

Joint application of **Continental Airlines, Inc., Continental Express, Inc., and Czech Airlines** filed **12/4/98** **Undocketed** to:

**XX** Renew Statements of Authorization under 14 CFR Part 212 to:

**Permit Continental/Continental Express to display the CSA designator code on their flights between Newark and the following U.S. points: Atlanta; Boston; Buffalo; Chicago (ORD); Cleveland; Columbus; Denver; Detroit; Houston; Indianapolis; Kansas City, MO; Los Angeles; Orlando; Miami; Minneapolis/St. Paul; New Orleans; Pittsburgh; Phoenix; Rochester, NY; San Francisco; St. Louis; Seattle; Tampa; and Washington, DC (BWI, DCA, and IAD), and between Newark and Mexico City.<sup>2</sup>**

**Permit Czech Airlines to display the Continental designator code on flights operated by Czech Airlines between Prague and Newark and between Prague and Bratislava and Kosice for the carriage of Continental's U.S.-Prague and U.S.-Slovak Republic traffic.**

Applicant rep.: **R. Bruce Keiner, 202-624-2500** DOT analyst: **Sylvia Moore, 202-366-6519**

(See Reverse Side)

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<sup>1</sup> Although styled as a joint application, only Continental will hold out service in the Newark-Prague/Bratislava/Kosice markets.

<sup>2</sup> CSA holds authority under its foreign air carrier permit (Order 96-10-46) to operate these services.

## DISPOSITION

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

**XX Balance dismissed** (i.e., Continental's/Continental Express' request for longer-term exemption authority)

The exemption authority granted was effective when taken: April 8, 1999, through April 8, 2001

The statements of authorization granted were effective when taken: April 8, 1999, and will remain in effect indefinitely, subject to the conditions listed below.

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

**XX Authority granted (exemption and code-share) is consistent with the aviation agreement between the United States and the Czech Republic. Exemption authority to serve Bratislava is consistent with the aviation agreement between the United States and Czechoslovakia, to which the Slovak Republic acceded upon its independence. Exemption authority to serve Kosice and authority to serve the Slovak Republic on a code-share basis is consistent with the overall state of aviation relations between the United States and the Slovak Republic. Code-share authority involving Mexico services is consistent with the overall state of aviation relations 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 (Continental)**

**XX Holder's foreign air carrier permit (CSA)**

**XX Standard exemption conditions (attached)**

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**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) Continental, Continental Express and Czech Airlines (CSA) 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.<sup>3</sup>

(b) Continental (or Continental Express) and CSA 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 if the carriers decide to cease operating all or a portion of the approved code-share services.<sup>4</sup>

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<sup>3</sup> We note that the code-share agreement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently decide to amend their code-share agreement to include any provision relating to an exclusive arrangement between the parties, that amended language must first be submitted for consideration by the Department.

<sup>4</sup> We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

(See Next Page)

(c) The code-share operations conducted under this authority must comply with 14 CFR 399.88 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted.<sup>5</sup> 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; and 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 carriage 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. 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) The authority granted here is specifically conditioned so that neither Continental (or Continental Express) nor CSA give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

**Remarks:** The authority for which Continental, Continental Express, and Czech Airlines requested renewal expired February 2, 1999, but had been kept in force pursuant to the provisions of the Administrative Procedure Act 5 U.S.C. 558(c), as implemented by 14 CFR Part 377, pending action on the carriers' timely filed renewal application.

Consistent with our standard practice for this type of application, we granted Continental's/Continental Express' exemption for a period of two years, and dismissed its request for longer-term authority.

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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; (2) grant of the authority 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 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.

*An electronic version of this document is available on the World Wide Web at:*

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<sup>5</sup> On March 15, 1999, the Department issued a new regulation, Part 257, governing code-sharing operations. That regulation becomes effective July 13, 1999.

*[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*